TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 16.

MANUEL CRESPIN ET AL., APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED OCTOBER 7, 1893.

(15,415.)

(15,415.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 42.

MANUEL CRESPIN ET AL., APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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a *Transcript of the San Antonito Case, No. 27.*

In the Court of Private Land Claims, Santa Fé District.

Tried December 8th, 1892.
Decided March 10th, 1893.
Appeal taken March 17th, 1893.

Counsel: For plaintiffs, Geo. Hill Howard, Esquire; Jeffries & Earle, Esquires; for defendant, Matt. G. Reynolds, Esq., United States attorney.

L. F. PARKER, JR.,
Official Stenographer.

1 UNITED STATES OF AMERICA, *Territory of New Mexico,* } *ss:*

Be it remembered that heretofore, to wit, on the twelfth (12th) day of August, A. D. 1892, Manuel Crespin and others, by their attorneys, Geo. Hill Howard, Jeffries and Earle, filed in the office of the clerk of the court of private land claims in and for the Territory of New Mexico a petition, in which said Manuel Crespin and others are plaintiffs and The United States is defendant; which said petition is in the words and figures following, to wit:

In the Court of Private Land Claims of the United States, Sitting at Santa Fé, New Mexico, August Session.

MANUEL CRESPIN, JUAN GARCIA Y ZAMORA, Juan Otero Ramon Zamora, Francisco Rael, A. Gutierrez, Gregorio Garcia, Manuel Garcia y Anaya, Polonaris Montaña Camilo Garcia, Anastacio Montana, Jose Crespin, Juan Garcia y Rael, Jose Maria Gutierrez, Martin Espinosa, Teofilo Griego, Santos Sanchez, Juan Espinosa, Marcelino Crespin, F. Montes, Manuel Garcia, Juan Trujillo, Nacario Candelaria, Francisco Trujillo, Pilar Trujillo, Vicente Zamora, Manuel Jaramillo, Telesfor Flores, Abran Candelaria, Andres Garcia, Joaquin Garcia, Nicanor Armijo, Justiniano Zamora, Julian Romero, Jose C. Garcia, Jose Sena, Leonardo Esquin, Cayetano Zamora, Justiniano Otero, Lorenzo Garcia, Manuel Baca, Dario Chavez, Francisco Sanchez, Teodoro Garcia, Rita Trujillo, Cornelio Montoya, Narciso Gutierrez, Juan Gutierrez, and Pelegrina Armijo, Plaintiffs,

vs.

2 THE UNITED STATES, Defendant.

} Petition in the Matter of Private Land Claim San Antonito.

To the Honorable Joseph R. Reed, chief justice, and the honorable associate justices of the said court:

Now come the above-named plaintiffs, your petitioners, by and

through their counsel, Geo. Hill Howard, Jeffries and Earle, and make and file in this honorable court this their petition in the matter of the said private land claim, and respectfully therein allege, represent, and show:

1. That your petitioners make claim to and assert ownership in fee of the lands and premises known as and called San Antonito, situate in the county of Bernalillo, Territory of New Mexico, containing about 32,000 acres, more particularly hereinafter described.

2. That your petitioners are the owners of and seized in fee of the said lands and premises and entitled to the confirmation of the same to them and as the heirs and legal representatives of the original grantees thereof.

3. That on the 24th day of March, A. D. 1840, the Republic of Mexico, while this Territory of New Mexico was a constituent part of said Republic, by and through Antonio Sandoval, the prefect or superior political chief of the district of Bernalillo, thereunto duly authorized by the laws, usages, customs, superior orders, and decrees of the said Republic or of its duly constituted and compe-
3 tent authorities, donated, adjudicated, granted, set apart, and delivered the possession unto Dionicio Atencio, Jesus Maria Olguin, Juan Jose Garcia, Gaspar Atencio, Pablo Sisneros, Pablo Carrio, Diego Garcia, Rumaldo Candelaria, Juan Ballejos, Francisco Martinez, Pedro Antonio Gutierrez, Mariano Gutierrez, Juan Griego, Jose Tomas Griego, Juan Cristobal Muñis, Juan Domingo Griego, Ramon Zamora, Vicente Zamora, Manuel Martinez, Bartolome Sanches, Juan Ygnacio Jinso, Miguel Gutierrez, Vicente Candelaria, Juan Lucero, and Juan Martin of that certain tract of land situate in the county of Bernalillo, Territory of New Mexico, in and upon the cañon of San Antonio, surrounding the placita, place, or town of San Antonito, about twenty-five miles east of the city of Albuquerque, more particularly described and set forth in the original grant document or espediente of title which remained in the office and formed a part of the archives of the said prefect and district of Bernalillo, testimonio or official copy whereof was at the time, under and in accordance with the then laws, usages, and customs, issued and delivered unto the said grantees, to serve them, their heirs, successors, or assigns, as evidence of complete, valid, and final title in fee.

4. That your petitioners, notwithstanding that they have made exhaustive and diligent search therefore, are unable to find the original expediente, borrador, or draft of title of the said grant from which the aforesaid official testimonio or copy was taken,
4 made, and delivered to the said grantees, as aforesaid, which said original espediente formed a part and parcel of the public archives of the Territory of New Mexico and Republic of Mexico from the said date of the said grant until the said Territory became a part of the United States, when or thereafter, at divers and various times, your petitioners are informed and believe parts and portions of the aforesaid public archives were lost, destroyed, and stolen, including the aforesaid original barrador or espediente, whereby the said archives became incomplete and insufficient to show what existed therein at the date the said Territory became a part of these

United States. Wherefore your petitioners aver that they cannot offer and produce to the court the aforesaid original espediente or the record thereof in the aforesaid archives.

5. That the aforesaid testimonio or official copy of the said original espediente, borrador, or draft of title so made, issued, and delivered by the said Mexican authorities to the said grantees remained in the possession of the said grantees and their said legal representatives, your petitioners, until about —, when the same was lost or stolen, and, notwithstanding diligent inquiry and search therefor by your petitioner, they have been unable to find the same. Wherefore they cannot produce and offer it to this honorable court as evidence in the matter of said grant.

6. That on the 10th day of April, A. D. 1840, while the
5 said original espediente, borrador, or draft of the said grant was in the *was in the* archives of the said prefecture and district of Bernalillo, at Barelas, a testimonio or true copy thereof was made, purporting to be for and the property of one Runaldo Chaves. (See Exhibit "A.")

7. That the last said testimonio or true copy of the said gran- was, prior to A. D. 1846, transferred and delivered by the said Rumaldo Chavez, by endorsement thereon, unto Gaspar Atencio, one of the grantees of the said grant, for his uses and purposes, and has ever since remained in the possession of the said Atencio or his legal representatives and your petitioners.

8. That your petitioners, on the 25th day of October, A. D. 1886, filed the same in a complete, perfect, and intact condition for record in the recorder's office in and for the county of Bernalillo, New Mexico; but that after the said filing and prior to the record thereof, made December 28, 1886, and while the said document was in the possession of the said office, about one-half, the last half, of the last folio or sheet of the said *od*cument was lost, and the said record was made exclusive or less th- said lost portion thereof. Where*of* your petitioners are obliged to present and file the same less the said portion thereof, so lost as aforesaid, and will, upon the trial of the case by this honorable court, being allowed thereto, prove the contents of the said lost portion of the said document; that the said portion of the said testimonio, so lost as aforesaid, defined, set forth, and showed:

6 1st. That the south boundary of the said tract to be "lo alto del cuchillo del Jaspe," or the summit of the ridge of the Jaspe; upon the east by the ceja (or brow) del monte del Potrio to the puerto (or pass) del Ojo del Indio; from thence on the side of the north to the said Cedro Grueso, the Pino Cuate, until the last sources (ultimos virtientes) upon the wes*y* side.

2nd. The measurement and laying out of the placita, or town, of three hundred varas square at or near the paraje of San Antonito, called the same San Antonito, and the assignments of lots in severalty therein to the said grantees.

3rd. The official signatures of the Jose Trujillo, judge, and of the attesting witnesses who made the said measurements and allotments

and who designated the said boundaries of the said tract and deliver- the juridical possession thereof unto the said grantees.

4th. The report of the said auto, or act of measurement, allotment, and juridical possession of the said grant to the said grantees by the said judge to the said prefect and the approval thereof by the said prefect and duly signed and witnessed.

9. The petitioners allege that they are informed and believe that the said grant was finally confirmed and approved by the governor, Manuel Armijo, and the departmental assembly.

10. That on the 4th day of March, A. D. 1840, under and by virtue of the said donation, adjudication, and grant, the designation of the exterior boundaries, the allotment of one hundred varas in width and running from the north to the south boundary of the said grant in severalty to each of the said grantees, the lay-
7 ing out and measurement of the placita, or town, of San Antonito, and the allotment to each of the said grantees of a lot in severalty therein was all had, made, and done and the juridical possession of the whole thereof given unto the said grantees by the official named and appointed in and by the said grant for the purpose, to wit, Jose Trujillo, under and in accordance with the decree of the said prefect and the superior orders, laws, customs, usages then obtaining and in force in the said Territory and Republic of Mexico.

11. That the said grantees petitioned for and obtained the said grant of the said tract and the said possession thereof, as hereinbefore set forth, in good faith, and they and their descendants and their legal representatives, your petitioners, from the said date of the said grant and the said juridical possession thereof to the present time have usefully held, occupied, and possessed the same and the whole thereof under and by virtue of the said grant, the said juridical delivery and possession thereof, and they now so hold, occupy, and possess the same in fee against the whole world under and by virtue of the said grant, and the said open, notorious, continuous, peaceful, and exclusive use, occupation, and possession of the same from the said date of the said grant to the present time in good faith.

12. That the said tract is about ten miles in length by about five miles in width, containing about thirty-two thousand
8 acres, as near as petitioners can state without an actual survey of the same, which has never been had or made.

Your petitioners file herewith a map or sketch of the said tract showing its shape, the natural objects, points, and places mentioned and called for, as hereinbefore set forth by the said grant and auto or act of juridical possession. (See Exhibit "C.")

13. Your petitioners file and offer herewith as a muniment of title the original document, marked Exhibit "B," of which the following is a correct translation, to wit:

"The citizen Jose Trujillo, justice of the peace of the jurisdiction of los ranchos, of Albuquerque, I certify in form of law that to the citizen Bisente Zamora were donated one hundred varas

in the San Antonito, according to and as appears in the general grant made by me, the said judge, under the decree, by the Sir Prefect Don Antonio Sandoval, March 24. The present certificate given at the ranchos of Albuquerque today, April 11, 1840, signed with two assistant witnesses, to which I give faith.

(Signed) JOSE TRUJILLO.

Assistants:
BERNABE CHAVEZ.
PABLO RAMON SISNEROS."

14. That your petitioners are now seized and possessed in fee of said premises, claiming the absolute ownership thereof, not only by virtue of said original grant, but also by virtue of and through the continuous possession, use, and occupation of said premises under exclusive claim of right thereto, as hereinbefore set forth, by said grantees and your petitioners, from the year 1840 to the present time, adversely to the whole world.

15. That said grantees or their legal representatives, at the date of the acquisition of New Mexico by the United States, held said grant discharged of any condition, charge, or reservation in relation thereto, if any there were, and that the same is further assured to them by reason of their said continuous, exclusive, open, and notorious possession, use, and occupation of said grant as against the whole world from 1840 to the present time.

16. That there are no gold or silver mines or lodes or minerals of the same within the limits of said grant, to the knowledge of your petitioners, and they therefore allege that there are none.

17. That the form of said grant, title, or espediente so made and issued to said grantees for said tract of land is a written title and grant document comprehending and showing all the steps and proceedings in the matter of the grant from the petition to and including the final grant, which said grant document was duly made, executed, and authenticated under and in accordance with the laws, superior orders, usages, and customs then obtaining in the then Territory of New Mexico, Republic of Mexico, and was and is in nature a complete, definitive town community grant in fee-simple.

18. That there are no adverse claimants, holders, or possessors of any part of said tract, and that the same does not conflict in whole or in part with any other grant or claim derived from the Mexican or Spanish government.

19. That the said grant has never been presented to or acted upon by any constituted authority of the United States or acted upon by it or under its authority in any manner whatsoever.

Wherefore your petitioners pray that the validity of the title to the said San Antonito grant, under and in accordance with the superior orders, usages, and customs of Spain and Mexico, the extent and location thereof, and the claim of your petitioners thereto may be inquired into and determined and decided by this court; that the same may be by your decree established, confirmed, and set apart to your petitioners as the legal representatives and successors in interest of the original grantees in accordance with the metes

and bounds set forth in the original grant document and the juridical possession given thereunder; that a survey thereof may be made by the surveyor general of the United States under the direction and instruction of this court; that the petitioners may be granted proper process to bring the defendant into court in accordance with the law, rules, and practices thereof to make answer hereto, and that they may be granted such other and further relief in the premises as in equity and justice to the court shall seem meet; and your petitioners will ever pray, &c.

GEO. HILL HOWARD,
JEFFRIES & EARLE,
Counsel for Petitioners.

11 Which said petition is endorsed: "No. 27, F. No. 1. Filed in my office this 12th day of Aug., A. D. 1892. James H. Reeder, cl'k, by Ireneo L. Chaves, deputy."

Be it further remembered that on the same day, to wit, the twelfth (12th) day of August, 1892, a paper was filed with said petition and marked Exhibit "A;" which said Exhibit A is in the words and figures following, to wit:

Translation.

Señor Prefect Dpn Antonio Sandoval:

Juan Jose Garcia and Gaspar Atencio, residents of the demarcation of Albuquerque, appear*ing* before your honor with due formality and state, sir, in the name of both and in that of the undersigned, that we, our constituents, finding ourselves without tillage lands by which to subsist, and there being back of the Sandia mountain a tract of land called San Antonito, the fertility of which and the increase of whose waters all invite its cultivation, by this means the commendable promotion of agriculture and the progressive benefit of the petitioners will be accomplished, we bring to the knowledge of your honor the fact that it is fifteen years, a little more or less, since this tract was donated to Cristobal Jaramillo, deceased; yet, moreover, it all this space of time said land has not been cultivated at all, and if this has been forfeited in accordance with our laws we humbly beg your honor to be pleased to grant us what we
12 ask, as it is without prejudice to a third party. Trusting in the great kindness which your honor shows to the poor and needy, which favor we ask in the name of the Mexican nation, we swear that we *fo* not act in bad faith in what is necessary, etc.

Albuquerque, March 16, 1840.

JUAN JOSE GARCIA.
GASPAR ATENCIO.

Decree.

BARELAS, *March* 21, 1840.

Let this petition be transmitted to the justice of the peace of Los Ranchos, in order that he report in detail to this prefecture concern-

ing both the nature of the land and as to whether the petitioners are in need of landed property which may provide them the necessities for their subsistence; and this report being finished, return it to this office, in order that whatever is proper may be decided.

SANDOVAL.

FRANCISCO SARRACINO, *Secretary.*

Report.

In fulfillment of what I am ordered to do by your honor's decree, dated the 21st of March, 1840, concerning the present petition, in consequence thereof, I have to say to your honor that I, this justice, having fully informed myself and being satisfied as to the nature of the land, *and* state that the land mentioned is such as the
13 petitioners state it to be; it is fitted for agricult-, very pleasing and very delightful for a life of tranquillity, very favorable to everything most necessary for a comfortable living. In relation to the petitioners being in need of landed property that may fully provide them with subsist*ance*, I have to say to your honor that excepting Diego Garcia, Jose Miguel Griego, and Juan Lucero, who are known to have land, but they state that they do not count upon it because they are in debt and have it secured by said lands, all the others have not such property.

With which I believe that your honor will be satisfied that I have complied with your superior decree.

Ranchos, March 22, 1840.

JOSE TRUJILLO.

Decree.

BARELAS, *Mar.* 24, 1840.

One of the most commendable and beneficial things to a people being the promotion of agriculture, let this petition be transmitted to the justice of the peace of Los Ranchos, in order that with all the customary formalities he give the possession solicited by the parties in interest, without prejudice to a third party, and only for cultivation the lands necessary, leaving free the pastures and watering places, which under no circumstances ought to be interfered with; and after this is done he shall make a full report to this prefecture.

SANDOVAL.

FRANCISCO SARRACINO, *Secretary.*

14 In the jurisdiction of los ranchos de Albuquerque on the 27th day of the month of March, of the year one thousand eight hundred and forty, I, the citizen Jose Trujillo, justice of the peace of the same jurisdiction, in virtue of what is ordered by the prefect of this district in decree of the twenty-fourth instant and in obedience thereto, in order to proceed in all things in compliance therewith and according to and as therein set forth, I ought to and I do order that notice be given to citizens Juan Jose Garcia and Gaspar Atencio, with all their constituents, grantees in the tract of

San Antoñito, that by the twenty-ninth day of the present month they shall assemble at the place designated and donated to make the measurements of the said tract, and, there being no opposition, the possession thereof will be given them as is ordered by the prefect in the decree already cited, and they are made grantees in accordance with law.

I, the present justice, by this decree thus provided, ordered and signed it, acting as a special justice with the two attending witnesses for lack of a notary public, of which there is none provided by law, to which I certify.

Immediately in said jurisdiction of los ranchos de Albuquerque, on said day, month, and year, I, the said justice of the peace, in virtue of what is ordered in the foregoing decree, cited and made known to the citizens Juan Jose Garcia and Gaspar Atencio and their associates personally everything that is therein set forth, which they understood, and I signed it, to which I certify with those attending as aforesaid.

At the Rito de San Antonito, on the twenty-ninth day of the month of March, of the year one thousand eight hundred and forty, complying with what has been decreed by the prefect, Don Antonio Sandoval, with the object of giving the possession referred to in these proceedings, and all the grantees being present, I took Juan Jose Garcia and Gaspar Atencio by the hands, saying to them that in the name of the Mexican nation (which may God preserve) I gave national and personal possession of said tract for cultivation to them and all their constituents without prejudice to the public as to pastures and watering places; I conducted them over said tract; they pulled up grass, threw stones, and made other signs and demonstrations of possession, in which act the parties placed in possession, as well as the bystanders who were present, shouted, saying, "Long live the Mexican nation! Long may it live! Long may it live!" and they placed the tract under the sole protection of Saint Anthony (San Antonio), as it had previously been, with which they quietly and peaceable took their possession, and the measurement of the land among the grantees was proceeded with in the following manner:

1. Dionicio Atencio, one hundred varas	100
2. Jesus Maria Olguin, one hundred	100
3. Juan Jose Garcia, one hundred and fifty	150
4. Gaspar Atencio, one hundred and fifty	150
5. Pablo Sisneros, one hundred	100
6. Pablo Carrio, one hundred	100
Seven, 7. Diego Garcia, one hundred	100
8. Rumaldo Candelaria, one hundred	100
9. Juan Ballegos, one hundred	100
10. Francisco Martinez, one hundred	100
11. Pedro Antonio Butierres, one hundred	100
End of page	1,200

Brought forward	1,200
12. Mariano Gutierres, one hundred	100
13. Salvador Candelaria, one hundred	100
14. Felipe Gutierrez, one hundred	100
15. Juan Griego, one hundred	100
16. Jose Tomas Griego, one hundred	100
17. Juan Cristoval Muñis, one hundred	100
18. Juan Domingo Griego, one hundred	100
19. Ramon Samora, one hundred	100
20. Bisente Martines, one hundred	100
21. Manuela Martines, one hundred	100
22. Bartolome Sanchis, one hundred	100
23. Juan Ygnacio Jinso, one hundred	100
24. Miguel Gutierrez, one hundred	100
25. Visente Candelaria, one hundred	100
26. Juan Lucero, one hundred	100
27. Juan Martin, one hundred	100
	2,800

The number of Castilian varas, divided among twenty-seven individuals, who were the grantees, being two thousand eight hundred, as appears from the foregoing statement, the fixed boundaries being where the sources of the water raise, which is on the west side, on the east the twin pine (pino cuate) to the little pass (puertecito) of los Huerteños, commonly so called, it being diagonally betweeen east and south, and the twin pine itself being recognized as a boundary mark, and a mound of stones that was piled
17 around the pine itself, which is on the north side, and the little pass of los Huerteños is on the south side. In this the land is included by the said sides. On the north side the little ridge (cuchillita), which is opposite, and it ends in the vicinity of a thick cedar tree with a natural girdle upon it, to which was given, as a further sign, a cross made on the tree itself, it being diagonally between north toward the twin pine. On the south side *y*he face of the top of the ridge called the Jaspe, recognizing as a boundary mark a large rock (peñasco) which is in a straight line with the end of the little ridge (cuchillita) mentioned on the north side, said possession being enclosed on the south side (torn) the said ride of the Jaspe and—

(Here nearly three-quarters of a page left blank.—Clerk.)

The present justice, with those of his attendance, by his decree thus provided, ordered and signed it as aforesaid.

It is a copy made from its original today, the tenth of April, one thousand eight hundred and forty, belonging to Don Rumaldo Chaves. RUMALDO CHACES. [SCROLL.]

It is composed of two sheets of four leaves, from number one to eight.

[Scroll of Rumaldo Chaves.]

18 (Which said Exhibit A is endorsed: Exhibit A. Translation. No. 27, F. No. 3. Filed in my office this 12th day of August, A. D. 1892. James H. Reeder, cl'k, by Ireneo L. Chaves, d'p'ty.

And be it further remembered that afterwards, to wit, on the 13th day of August, A. D. 1892, a summons was issued from the office of said clerk; which said summons is in the words and figures following, to wit:

Summons—U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA, } ss:
Santa Fé, N. M., }

In the U. S. Court of Private Land Claims.

MANUEL CRESPIN *et al.*, Plaintiff-, } Petition Filed in the Clerk's
vs. } Office this 12th day of
THE UNITED STATES, Defendant. } August, A. D. 1892.

The President of the United States of America to Matt. G. Reynolds, Esq., U. S. att'y for the ct. pt. ld. claims, Greeting:

You and each of you are hereby notified that an action has been brought in this court by Manuel Crespin *et al.*, plaintiff-, against you, as defendant, under the provisions of the act of Congress
19 of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3rd, 1891, and that a copy of the petition of said plaintiff- is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court on or before the third day of the term of said court, to be held at Santa Fé, N. M., on the 15th day of August, 1892, and if you fail so to do the said plaintiff- will take default, according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 13th day of August, A. D. 1892, and of the Independence of the United States the 116th year.

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES,
Deputy Clerk.

On the back of which appears the following:

Proof of Service.

UNITED STATES OF AMERICA, } ss:
Terr. of New Mexico, }

SANTA FÉ, *A'g't* 15, *A. D.* 1892.

I hereby certify that I received the within writ on the 13 day of August, A. D. 1892, and that I have personally served the

20 same upon the said defendant, Matt. G. Reynolds, U. S. attorney for the court of private land claims, by delivering to him personally a true copy of the within writ at the time and place as follows: As to ——, at Santa Fé, county of Santa Fé, on the 13 day of August, A. D. 1892.

This writ therefore returned by me, as the law directs, this 13 day of August, A. D. 1892.

TRINIDAD ROMERO, *Marshal*,
By BERNARDO ROMERO,
Deputy Marshal.

Which said summons bears the following endorsements, to wit: "Gen. No. 27, F. No. 5. Summons. Filed this 13 day of Aug., A. D. 1892. James H. Reeder, clerk, by Ireneo L. Chaves, dep'ty. Geo. Hill Howard, Jeffries & Earle, attorneys for plaintiff-."

And be it further remembered that afterwards, to wit, on the nineteenth (19) day of August, the same being the fifth (5) day of the August term, A. D. 1892, a motion was filed in the office of said clerk; which said motion is as follows:

In the Court of Private Land Claims of the United States, Sitting at Santa Fé, New Mexico, August Session.

MANUEL CRESPIN *et al.*, Plaintiff-,
vs.
THE UNITED STATES, Defendant.

21 In the matter of the private land claim San Antonito.

To the Honorable Joseph R. Reed, chief justice, and the honorable associate justices of the said court:

Now comes the plaintiffs, your petitioners, and move the court to proceed and take testimony at Albuquerque, New Mexico, in the matter of the San Antonito private land claim now pending in this court, and to designate a day for such purpose.

This motion and prayer is made for the reason that there are a large number of witnesses, some of them very old and infirm, to be examined in this cause, who may reach Albuquerque within an hour or two by team from their homes, and thus be enabled to readily give their testimony without hardship and much expense, which otherwise would be great.

Your petitioners will ever pray.

GEO. HILL HOWARD AND
JEFFRIES AND EARLE,
Att'ys for Petitioners.

Which said motion bears the following endorsements, to wit: "Motion to take testimony at Albuquerque. F. No. 7. Filed in my office this 19th day of August, 1892. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk."

22 And be it further remembered that *afterwards*, to wit, on the 25th day of November, A. D. 1892, there was filed in the office of said clerk an answer; which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District.

MANUEL CRESPIN *et al.*, Plaintiff-,
vs.
THE UNITED STATES, Defendant. } No. 27.

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the plaintiffs' petition filed in the above-entitled cause says—

That it has no knowledge or information sufficient to enable it to form a belief as to whether or not on the 24th day of March, 1840, one Antonio Sandoval was a prefect of the district of Bernalillo, in the Territory of New Mexico, nor as to whether upon said day said Sandoval, pretending to act on behalf of the Mexican Re-
23 public, undertook to grant, set apart, and deliver the possession of the land described in plaintiffs' petition, but says if he did so act, it was without warrant or authority of law and in violation thereof, and whatever acts and doings the said Sandoval may have performed or done in that behalf were absolutely void.

Says it has no knowledge or information sufficient to enable it to form a belief as to whether or not the expediente of title alleged to have been issued by said Sandoval, prefect as aforesaid, was deposited in the archives of said prefecture, but if they were so deposited, it was without warrant or authority of law.

Further answering, it denies that said original alleged expediente ever formed a part or parcel of the public archives of the Territory of New Mexico and the Republic of Mexico.

It denies that at divers and various times since the acquisition of this Territory by the United States the archives have been so lost, destroyed, and stolen, so as to make said archives so incomplete and insufficient that they would fail to show the existance of the grants of public lands within the Territory of New Mexico.

Says it has no knowledge or information sufficient to enable it to form a belief whether on the 10th day of April, 1840, while an alleged draft of said grant was in the archives of said prefecture, a true copy thereof was made, purporting to be for and the property of one Rumaldo Chavez, but says if such were the case the said archives of the said prefecture was not the proper depository as provided by law for grants to public lands by the Mexican
24 Republic, and that the copy thereof and the certification thereof was without warrant or authority of law and imports no verity to said copy.

Says it has no knowledge or information that said last-mentioned

copy was prior to 1846 transferred and delivered to said Chavez by endorsement thereon unto Gaspar Atencio, one of the original alleged grantees, nor as to whether the same has ever since remained in the possession of said Atencio or his legal representatives and the petitioners or not.

Further answering, the defendant says that the boundaries set out in said petition of said alleged grant were never authorized to be designated or defined of the land alleged to have been petitioned for and granted; therefore alleged that the said prefect, as foresaid, never attempted to grant and never did grant the lands embraced within the boundaries set out in said petition.

Denies that juridical possession was ever given to the land described in plaintiff's petition under and by virtue of the directions and orders of said prefect or any one else.

It denies that said alleged grant or any part thereof or any act performed thereunder ever received the approval or confirmation of the governor, Manuel Armijo, and the departmental assembly or any one else lawfully authorized thereto.

It says it has no knowledge or information sufficient to enable it to form a belief as to whether or not on the 4th day of March, 1840, an allotment was made in severalty to each of said alleged
25 grantees, as alleged in said petition, but if the same was so made it was without warrant or authority of law and void.

It has no knowledge or information sufficient to enable it to form a belief as to whether the original alleged grantees and their legal representatives since said alleged grant and since said alleged delivery of possession have been in the actual, exclusive, and notorious possession of the same, nor as to whether the petitioners are the legal representatives in interest of the said alleged grantees or not.

It denies that said prefect ever granted said property to any one in the amount of thirty-two thousand acres, and it denies that the tract alleged to have been granted by said prefect is ten miles in length and five miles in width.

It denies that the plaintiffs herein are *not* or ever have been seized and — possession by title in fee-simple of said premises.

It denies that said alleged grantees or their legal representatives at the date of the acquisition of New Mexico by the United States held said land discharged of any condition, charge, or reservation, and it denies by reason of said alleged possession, if any they have had since 1840, they have acquired any interest therein, either legal or equitable.

It denies that whatever muniments of title may have been delivered to the alleged original grantees, if any, were executed and delivered by any one authorized by law to dispose of the public domain of the Republic of Mexico, or that the same were
26 ever recorded in the proper archives, as required by law.

It denies that the claim of plaintiff is one which, according to the law of nations, the stipulations of the treaty of Guadalupe Hidalgo, and the laws and ordinances of the Republic of Mexico, or

upon the principles of public law, the United States is bound to respect and recognize.

All other allegations not hereinbefore answered are denied, and it is demanded that plaintiffs be put to their proof of all the allegations in said petition, as provided they shall be by the act approved March 3rd, 1891, under which this court assumes jurisdiction of which controversy, and that the said plaintiffs shall be put to their proof as to their pretended interest or supposed interest therein.

Now, having fully answered, it prays the court that a decree may be entered rejecting the confirmation of said alleged claim or grant, and that said petition may be dismissed, and for such other and further orders as may seem meet and that this court may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

Which said answer bears the following endorsements:

No. 27, file No. 8. Answer. Filed in my office this 25th day of November, A. D. 1892. James H. Reeder, clerk.

27 And be it further remembered that afterwards, to wit, on the twenty-sixth (26) day of November, A. D. 1892, a Spanish document was filed in the office of said clerk, with a translation thereof, marked Exhibit B of their petition; the translation of which said Exhibit B is in the words and figures following, to wit:

"The citizen Jose Trujillo, justice of the peace of the jurisdiction of los ranchos de Albuquerque, does hereby certify in form of law that one hundred varas of land at San Antoñito were donated to Vicente Samora in accordance with an- as stated in the general grant made by me, the said justice of the peace, by virtue of the decree of March 24th made by the prefect Don Antonio Sandoval. The foregoing certificate is given at the ranchos this 11th day of April, 1840, I signing it with my two attending witnesses, to which I certify.

JOSE TRUJILLO. [RUBRIC.]

Attending witness:
RUMALDO CHAVEZ. [RUBRIC.]
Attending witness:
PABLO ROMAN SISNEROS. [RUBRIC.]"

Which said Exhibit B bears the following endorsements:

C. 27, F. No. 13. Translation Exhibit B Filed in my office this 26th day of November, A. D. 1892. James H. Reeder, clerk, by Irenio L. Chaves, deputy.

And be it further remembered that afterwards, to wit, on the — day of ——, 1892, there was filed in the office of the clerk
28 of this court translation of each side of a fragmentary part of Petitioners' Exhibit A, filed as a portion of their petition

on the 12th day of August, 1892; which said portion was not identified as an exhibit, but which, together with the translation of said Exhibit A in Spanish, on page 11 to page 17, inclusive, makes a complete translation of the Spanish document filed and marked Exhibit A of plaintiffs' petition.

The translation of said fragmentary portion of said Exhibit A is as follows, to wit:

"* * * easements, with warning to all the new settlers on this land that they have no right to close the pastures and watering places nor to obstruct the roads already made within their lines under penalty of losing the land if they should do so, nor to go beyond the limits designated, the * * *

"This copy is transferred in favor of the citizen Gaspar Atencio, belonging solely to him the right to make such uses of it as he may deem fit, as he has given me his money for it; and I, the undersigned, obligate myself, if *any* any time a doubt should arise as to whether this *this* an exact copy of the original grant which is in the office of the prefect, to pay him the damages which it may cause him. Given in the town of" * * *

And be it further remembered that afterwards, to wit, on the 29th day of November, A. D. 1892, there was filed in the office of
29 the clerk of this court a notice; which said notice is in the words and figures following, to wit:

"In the United States Court of Privat- Land Claims.

MANUEL CRESPIN
vs.
TH- UNITED STATES. } Cause No. 27.

To Matt. G. Reynolds, U. S. attorney.

SIR: Please take notice that on the hearing of this case we shall refer to the following cases and documents for the purpose of showing that other grants had been made by prefects, have been recognized, acquies-ed in, and confirmed by the proper Mexican authorities, and also that several of such grants have been confirmed by the Congress of the United States, to wit:

Case of Jose S. Ramirez, which is San Pedro grant, Surveyor General's Report No. 44.

Town of Torreon, Surveyor General's Report No. 22, confirmed and patented. See Ex. Doc. No. 14, H. R., 26th Cong., 1st session.

Town of Tejon, file of Surveyor General's office No. 82, confirmed and patented.

Rio Colorado grant, pending before and under advisement by court of private land claims as cause No. —.

GEO. HILL HOWARD AND
JEFFRIES AND EARLE,
30 *Pl'ffs' Att'ys.*"

Which said notice is endorsed as follows:

"No. 27. Ex. D. Notice of use of documents and cases in evidence. Filed in my office this 29th day of November, A. D. 1892. James H. Reeder, clerk, by Ireneo L. Chaves, deputy."

And be it further remembered that afterwards, to wit, on the third (3) day of December, the same being the fifth (5) day of the regular November term, 1892, of this court, the following proceedings were had, to wit:

MANUEL CRESPIN *et al.*, Plaintiff-,
vs.
THE UNITED STATES, Defendant. } No. 27. San Antonito Grant.

This cause was by agreement of parties set for trial on Wednesday, the 7th inst.

And be it further remembered that afterwards, to wit, on the eighth (8) day of December, A. D. 1892, the same being the ninth (9) day of the regular November term, 1892, the following further proceedings were had, to wit:

MANUEL CRESPIN *et al.*, Plaintiffs,
vs.
THE UNITED STATES, Defendant. } San Antonito. No. 27.

31 Come now the parties in the above-entitled cause, plaintiffs appearing by their attorneys, Geo. Hill Howard and Jeffries and Earle, and the United States by Matt. G. Reynolds, Esq., United States attorney, and announced themselves ready for trial. Plaintiffs, being put to their proof as to the allegations in their petition, introduced oral and documentary evidence. After full argument on both sides the court took the above cause under consideration, after which court took a recess until 2 o'clock p. m.

Upon the trial of this cause the following proceedings were had, to wit:

Mr. HOWARD: I will read the petition to the court.

(Petition read.)

Mr. REYNOLDS: I will read the answer of the United States.

(Answer read.)

Mr. EARLE: We offer in evidence Exhibit A. It is a copy of the grant.

(Which said Exhibit A, the translation thereof into the English language, has heretofore been copied into this transcript as Exhibit A to plaintiffs' petition, on pages eleven (11) to seventeen (17), inclusive, and also the fragmentary portion thereof on page twenty-eight (28), to which reference is made for Exhibit A of petitioner-, introduced on the trial of this cause.

Mr. REYNOLDS: I object to it for the reason that no connection is shown between the instrument and the archives, nor is the
32 instrument in anywise verified, and on its face it shows that under the law the officer making the same had no authority

to dispose of the public lands of Mexico, and also because it is but a copy of a copy and uncertified by officials who had the custody under the law or should have had the custody under the law of grants and muniments of title derived from the Republic of Mexico to land in New Mexico.

By the COURT: Exhibit A admitted subject to objection.

Mr. HOWARD: We offer Exhibit B, which is an hijuela or certificate. For Plaintiff-' Ex. B see page 27 of this transcript.

Mr. REYNOLDS, U. S. attorney: I wish to add another objection to Exhibit A. The whole of Exhibit A is only the act of inferior officials of a prefecture, none of which acts are authorized by the laws of Mexico without an original grant by the governor, and also for the reason that this grant appears to have been granted prior to 1840 to Cristobal Armijo, and no proceedings of denouncement are shown to have ever been taken to forfeit the land to the government, making it subject to regrant.

Mr. HOWARD: If the court please, I offer a plat or sketch map, marked Exhibit C.

Mr. HOWARD: — now offer Exhibit D for plaintiffs, which is a notice to the United States attorney that we intended to use certain documentary evidence on the trial of this cause, and we now
33 reoffer these cases enumerated there in evidence.

Which said Exhibit D as offered has been heretofore copied in this transcript on pages twenty-nine (29) and first portion of page thirty (30) hereof.

Mr. REYNOLDS: Let the record show that the United States objected to any evidence as to the action of Congress upon any prefect grants, it being incompetent and immaterial and has no tendency to establish *to* validity of this particular grant.

Mr. HOWARD: This is all the documentary evidence.

MANUELITA MARTINEZ, being introduced as a witness on behalf of plaintiffs, testified in Spanish as follows:

Direct examination.

By Mr. HOWARD, for plaintiffs:

Q. What is your name?
A. Manuelita Martinez.
Q. What is your age?
A. I do not know how many years.
Q. Where do you reside?
A. At San Antonito.
Q. In what county is that?
A. It is in the county of Bernalillo.

Q. Ask her if she knows if there was a grant made to her-
34 self and to others of the land of San Antonito.

Mr. REYNOLDS: Object to the question, because it is not competent to prove the grant by oral testimony; whatever rights they may claim or have can be seen from the papers.

By the COURT: Admitted subject to objection.

A. Yes, sir.
Q. To herself and others?
A. Yes, sir.
Q. Were you one of the grantees of that grant?

Mr. REYNOLDS: Object to the question. The grant will show for itself.

By the COURT: Admitted subject to objection.

A. Yes, sir.
Q. How much?
A. One hundred varas.
Q. Do you remember about what year that grant was made?
A. Yes, sir.
Q. What year?
A. In the year 1840.
Q. Who divided the lands there—who gave her this one hundred varas?
A. Don Jose Trujillo, who was the judge.
Q. Was he present?
A. Yes, sir.
35 Q. Do you remember the names of any of the other grantees with you?
A. I remember some.
Q. State some of them.
A. Ramon Samora, Vicente Samora, Bartolo Sanchez, Juan Ignacio Jinxo, Juan Christobal Muniz; *that* are all I can remember.
Q. Ask her if she remembers who petitioned for the grant—who made the petition to the prefect.
A. Some men got a certificate to show they had obtained a grant.
Q. What men were those, if she can remember?
A. I do not remember.
Q. Does she know who they came to see at Santa Fé, if any one *one?*
A. Don Manuel Armijo.

Mr. REYNOLDS: The petition for the grant and the grant will show for itself, and it shows nothing of the kind.

Q. Who was Don Manuel Armijo?
A. He was the governor; he was from Albuquerque.
Q. Did they get anything from the governor—did they get any written document and written grant?

By the COURT: Change the question.

Q. Did they obtain anything, and, if so, what, from the governor?
A. They obtained it to be granted, and the paper went to the prefect.
36 Q. To what prefect?
A. Don Antonio Sandoval.
Q. How old were you when this possession was given?

A. Either twenty-seven or twenty-eight years old.
Q. Have you lived there ever since this possession was given?
A. Yes, sir; I live there yet.
Q. Are the families of these other grantees that you mentioned living there, they or their families?
A. The sons live there; the parents are already dead.

No cross-examination.

JUAN OTERO, introduced on behalf of plaintiffs, testified on behalf of the plaintiffs in Spanish as follows:

Direct examination.

By Mr. HOWARD, for plaintiffs:

Q. What is your name, age, and residence?
A. Juan Otero is my name; fifty-five years old; I live at San Antonito.
Q. Where is San Antonito?
A. It is near Albuquerque, in the county of Bernalillo.
Q. How long have you lived there?
A. I have lived thirty-six or thirty-seven years.
Q. How many people are there living at San Antonito?
A. There are about sixty-six heads of families.
37 Q. How many people are there altogether?
A. About three hundred.
Q. Do you know the document that is shown to you—do you recognize the document? (Exhibit A shown witness.)
A. I know it.
Q. What is that document?
A. That is the grant of San Antonito.
Q. How long have you known that document?
A. It is about twenty-five years that I know it.
Q. In whose possession was it?
A. It was in the possession of Ramon Samora.
Q. Who was Ramon Samora?
A. He was one of the grantees of San Antonito.
Q. Where is he?
A. He is at his house.
Q. How does it come in the possession of Ramon Samora?
A. A man—Juan Jose Garcia—had this paper.
Q. Where did Juan Jose Garcia live?
A. He was one of the grantees.
Q. Do you know Juan Gaspar Atencio?
A. No, sir; I only heard his name.
Q. Is his family—is he dead?
A. Yes, sir.
Q. Has he any family?
A. He had a family; I know very little of his family.
38 Q. Where do they live?
A. They live at Los Candelarios.

Q. This document shown to you purports to be—is it the original or only a copy of the original grant document?

Mr. REYNOLDS: Object to the question; as to the form of it and as to what it purports to be, the document will show for itself.

By the COURT: Objection sustained. The document shows on its face that it is a copy.

Q. Do you know any other papers relating to this grant except this document, Exhibit A?

A. Yes, sir.

Q. What paper, if you know?

A. I know an hijuela.

Q. Do you know this paper that is shown you in this case? (Exhibit B shown witness.)

A. Yes, sir.

Q. What is that?

A. It is a paper belonging to Vicente Samora, and it remained in the possession of his sons.

Q. Where are his sons living?

A. They live at San Antonito.

Q. Who was Vicente Samora?

A. He was one of the grantees of the place.

Q. How long since he died?

39 A. Three years.

Q. Did you know him there when you first went to San Antonito?

A. Yes, sir; I knew him for many years.

Q. How does this document come here?

A. We took the paper from the heirs of Vicente Samora; we obtained the paper from them, and we placed it in the hands of the attorney.

Q. For what purpose?

A. To the end of proving up this case.

Q. Did he know Jose Trujillo?

A. No, sir; I knew him only by name.

Q. What did you know about him?

Mr. REYNOLDS: I object to the question.

Withdrawn.

Q. Do you know anything about the grant of land at San Antonito?

A. Yes, sir.

Q. State what you know about it.

Mr. REYNOLDS: I object to the proving of a grant by parol unless a foundation has been laid.

By the COURT: Admitted subject to objection.

A. I know the grant was given in 1840; I know it through the grantees themselves in possession.

Q. Ask him to go on and tell all about it.

A. I know that a grant was given in 1840, and the lands
40 were partitioned into strips of one hundred and fifty varas each; three of the grantees one hundred and fifty varas each and the rest of the grantees one hundred varas apiece.

Q. Do you know whether any of these other grantees that you speak of had anything given to them to show title by any one?

A. Yes, sir; I know something from the persons themselves; that they had an hijuela.

Q. Did you ever see any of the other hijuelas besides those you testify to?

A. No, sir; I have not seen any.

Q. Do you know anything about any other document than that which I have shown you here (Exhibit A)?

A. There are deeds of conveyance of the purc*ah*sers from the parties themselves, many of them.

Q. Did you ever see any other document or paper to this grant than the one which you have had presented to you here?

A. No, sir.

Q. You don't know about any other, then?

A. No, sir.

Q. Did you know Don Antonio Sandoval?

A. Yes; I knew him.

Q. Where di- you know him?

A. I knew him many years ago, when I was young yet.

Q. Do you know whether he occupied any official position under the Mexican government at any time?

41 A. I do know. He did occupy one; he was a prefect.

Q. Where did he live?

A. He lived at Los Barales.

Q. Do you know anything about his house having been destroyed or burned—destroyed in any way?

A. Yes, sir.

Q. Tell how it was destroyed.

A. What I know is that it was burned down.

Q. Did Sandoval have any records of the country there in his house—any part of them—records of the prefecture?

A. Yes, sir.

Q. Do you know whether they were destroyed by that fire?

A. I believe they were.

Q. Did you ever hear any one state about it?

A. I heard it said that they were burned.

Q. Who did you hear say about it?

A. Vicente Samora, deceased, and many other persons.

Q. Do you know whether any other documents refer-ing to this grant were destroyed by that fire?

A. There may have been some; I do not know.

Q. Do you know of any belonging to the San Antonito grant?

A. Of the hijuelas only that one (indicating) can be found.

Q. Do you know the boundaries of this grant of land that you speak of?

A. Yes, sir.

42 Q. How do you know about the boundaries?
A. The grantees themselves showed them to me.
Q. What grantees?
A. Vicente Samora, Ramon Samora, Bartolome Sanchez, Juan Ignacio Jinxo——
Q. Were they living at San Antonito when they showed you these boundaries?
A. Yes, sir; they have always lived there.
Q. What were the boundaries of this grant? State them.
A. On the north side the pine tree called "pino cuate" and the ridge along near the pino cuate, a very thick cedar tree.
Q. What is the boundary on the south?
A. The boundary on the south is the top of the Jaspe ridge.
Q. What was the east boundary?
A. On the east the Puerticito de los Huerteños y Ceja del Monte del Portrio.
Q. To what point on the north does the Ceja Monte Portrio extend?
A. Between north and east, and it forms the corner.
Q. What forms the corner?
A. It forms a sort of a pocket; that we call Ojo del Indio; it is like a pass.
Q. What is the western boundary of this grant?
A. The mother springs of the Sandia mountains.
Q. Can you name those springs, some of them?
A. I can give all their names; yes, sir.
43 Q. Give them.
A. The Ojo del Rancho del Chino.
Q. Where is that ojo?
A. It's at the corner, between north and west.
Q. What other springs?
A. The spring of the cienega.
Q. Where is that?
A. That is on the west.
Q. How is that cienega called?
A. That is called—we call it the Ojo of the Cienega.
Q. What other?
A. There is the Samuel spring.
Q. Where is that?
A. That is in the same land on the other corner.
Q. On what corner?
A. The corner between south and west.
Q. Is there any stream running through this grant?
A. These same three springs are the same that belong to the town.
Q. Is there any stream running through those springs?
A. Yes, sir; it runs to the town.
Q. What is that stream called?
A. The stream of San Antonito.
Q. Does he know of any place called Borraca de San Antonito?
A. I know of several places that they call Baraca.

44 Cross-examination.

By Mr. REYNOLDS, U. S. attorney:

Q. When did you go to San Antonito?
A. I went to San Antonito about the year sixty-seven, more or less.
Q. Where did you go from?
A. San Antonio.
Q. Then all you know about these grant papers is what you have been told?
A. Yes, sir. I have been informed from the original grantees themselves.
Q. You have been told; you have no knowledge of your own?
A. I know that it was granted in that manner.
Q. How do you know it?
A. Because it was granted to them and partitioned to them.
Q. How do you know that?
A. I know through the grantees themselves that they sent a man over here to petition for the grant.
Q. You have been told that?
A. Yes, sir; I know it through them.

Witness excused.

GREGORIO GARCIA, being introduced as a witness on behalf of plaintiffs, testified in Spanish as follows:

45 Direct examination.

By Mr. HOWARD, for plaintiffs:

Q. What is your name, age, and residence?
A. I am fifty-nine years old.
Q. Where do you live?
A. I live at San Antonito.
Q. What county?
A. Bernalillo county.
Q. How long have you lived in San Antonito?
A. About thirty years.
Q. Do you know a document marked Exhibit A?
A. I do not know how to read, but I know that paper.
Q. What is that paper?
A. That's an hijuela.
Q. Do you know anything about a claim of land by the people of San Antonito?
A. Yes, sir.
Q. Do you know what they claim there?
A. Maybe they claim the land of San Antonito.
Q. Have you any interest in the grant of San Antonito?
A. Yes, sir.
Q. How do you get those lands?
A. I bought them.

Q. From whom did you buy them?
A. I bought from Don Manuel Crespin.
46 Q. How much land did you buy?
A. Sixty varas.
Q. Do you know how the other people of San Antonito hold their lands?
A. Yes, sir; I know.
Q. How?
A. By purchase.
Q. From whom?
A. Don Serafin.

Mr. HOWARD: That will do.

No cross-examination.
Witness excused.

MANUEL CRESPIN, being introduced on behalf of the plaintiffs, testified in Spanish as follows:

Direct examination.

By Mr. HOWARD, for plaintiffs:

Q. What is your age and residence?
A. I am going on fifty-three years; my residence is San Antonito.
Q. Where is San Antonito—in what county and grant?
A. In the county of Bernalillo.
Q. How long have you resided there?
A. Since the year 1863.
Q. Have you any interest in the land of San Antonito?
47 A. Yes, sir.
Q. How much have you got there?
A. I have four hundred varas of land.
Q. From whom did you obtain that land?
A. I obtained it from the grantees.
Q. The grantees of what?
A. The grantees of the grant of San Antonito.
Q. Are any of the grantees of the San Antonito still living?
A. No, sir; all of them are dead.
Q. Do you know Manuelita Martinez?
A. Yes, sir.
Q. Is she dead?
A. No, sir; she is alive.
Q. Is she one of the original grantees that you spoke of?
A. Yes, sir.
Q. Then they are not all dead?
A. I mean to say that the ones who had the land which I claim are all dead.
Q. Ask him if he knows this leaf of paper.

Exhibit B shown witness.

A. I know it.

Q. How long have you known that paper?
A. I know it from the time I went to the place.
Q. When did you go to the place?
48 A. From the year sixty-three or sixty-one.
Q. In whose possession did he know this paper?
A. In the possession of Vicente Samora.
Q. Is this Vicente Samora living or dead?
A. He is dead.
Q. Since his death in whose possession has it been?
A. In the possession of his sons.
Q. What do you call that paper?
A. That's an hijuela.
Q. Do you know this paper? (Exhibit A shown witness.)
A. I know it.
Q. What is that?
A. That is a copy taken from the original.
Q. Copy of what original?
A. Copy of the grant of San Antonito.
Q. How long has he known this copy?
A. From the year 1863 to this date.
Q. Where did he first see this paper?
A. He saw it in the hands of Ramon Samora.
Q. Where?
A. At San Antonito.
Q. Is he alive?
A. Yes, sir.
Q. Where is he?
A. He is at San Antonito.
49 Q. You say it is a copy; do you know where the original grant is or anything about it?
A. They left it in the charge—in the office of Antonio Sandoval.
Q. Who left it?
A. The authorized persons, Gaspar Atencio and Juan Jose Garcia.
Q. About how long ago?
A. It is in the year forty, as I understand.
Q. Is that original in existence now, if you know?
A. No, sir; I heard that the archives there burned down.
Q. Where?
A. At Albuquerque.
Q. Did you know Don Antonio Sandoval?
A. I knew him.
Q. Where did he reside?
A. At Los Barales.
Q. Was that where he held the prefecture?
A. At Los Barales? No; I do not understand it so; I understood it was in Albuquerque.
Q. Does he know if these archives were burned at Albuquerque or at Borales?
A. I heard it said at Albuquerque.
Q. By whom did you hear it said?
A. By the petitioners—the owners.

Q. Do you not say that Antonio Sandoval lived at Barelas?
50 Does he know whether the residence of Antonio Sandoval was destroyed at any time?

Mr. REYNOLDS: Objected to.

A. The house of Antonio Sandoval was not destroyed in Barelas.
Q. What house was destroyed at Albuquerque?
A. As I understand it, the office of the prefecture.
Q. About what time was that destruction?
A. I was not old enough to know; maybe it was in the year '54 or in the year '57.
Q. Do you know—have you looked for the origin- of this document, you and these grantees?
A. Yes, sir; in every office.
Q. And not been able to find it?
A. We have not found it.
Q. Do you know whether at any time this document, Exhibit A, whether that has been compared at any time with the original?
A. That I cannot state. As I understand, it must have been compared, because it came out from that.
Q. Came out from what?
A. I understand it came from the original.
Q. How did you learn it came from the original?

Mr. REYNOLDS: I object to the question as incompetent, as to how it come from the original; it shows on its face, if it did, how it come from the original.
No ruling.

51 A. I know it because they told me they had left the true original in the house of Antonio Sandoval.
Q. How did you learn it came from the original?
A. From the petitioners, and that is why I understand it must have come out.
Q. You say the original was left in the house of Antonio Sandoval?
A. Yes, sir; so they said.
Q. Did they have a copy?
A. I understand so.
Q. Do you know the boundaries of this grant that you speak of?
A. Yes, sir.
Q. How do you kn-w the boundaries?
A. From Vicente Samora, Bartolome Sanchez, and Ramon Samora; they showed us the boundaries.
Q. Do you know where the boundary — they showed you on the north?
A. On the north they showed us the bald ridge (cuchilla pelada) near the pino cuate.
Q. What was the boundary on the south?
A. The summit of the cuchilla de Jaspe.
Q. What was the eastern boundary?
A. The Puertecito de los Huerteños——

Q. What was the west——

A. And from the east to the north the small ridge of the

52 Ojo de Chino.

Q. What was the western boundary of this tract?

A. The boundary on the west is the Ojo de Samuel, and the last springs or last water-sheds of the mountains, Sandia.

Q. Do you know of any place called the Ceja del Monte del Potrio?

A. Yes, sir.

Q. Where is that with reference to this grant?

A. It is at the other end of the boundary line.

Q. What boundary?

A. The boundary of the Puerticito de los Huerteños.

Q. Do you know of a place called San Antonito?

A. Yes, sir.

Q. Where is that with reference to this grant?

A. It is at the mother springs of the mountains on the west boundary line.

Q. What boundary line?

A. Of the Sandia mountains.

Q. Is tha- place of San Antonito within the grant that you have described?

A. Yes, sir.

Q. Then the plaza on San Antonito is with the boundaries?

A. Yes, sir; it is situated within.

Q. Is there any stream running through this tract?

A. Yes, sir.

Q. What is the name?

53 A. It is called the stream of San Antonito.

Q. How many people are living within the limits of this grant?

A. There may be three hundred.

Q. Are they claiming under this grant or contrary to it?

A. They are claiming under this grant.

Q. How are they claiming under it?

A. They claim it under the government of Mexico.

Q. Is there anybody living on this tract that you have described adverse to these people?

A. No, sir.

Q. How long is this tract from east to west, about?

A. About ten miles.

Q. How wide is it from north to south?

A. About five miles.

Q. Do you know any difference between this paper now then when you first knew it?

A. There is some difference.

Q. What is the difference?

A. There is a piece of the paper wanting.

Q. How did that piece become missing?

A. We took it to the prefecture in 1857.

Q. What prefecture?

A. Of the county of Bernalillo.

Q. What did you take it there for?

A. To register it; to record it.

54 Q. Did you record it; did you leave it in that office for record?

A. Yes, sir.

Q. And you say the piece lost—the piece that you speak of being lost, was it ever recorded?

A. I do not know if it was. When we went there we missed the paper.

Q. Was the piece there when they took it to be recorded?

A. Yes, sir; it was there.

Q. Ask him if this document was whole and intact when they took it to be recorded.

A. It was complete.

Q. Can you tell, more or less, what that lost peice of paper contained; do you know yourself?

A. I do not remember, because I can read very little of this ancient manuscript writing.

Q. State what you know or remember about it.

A. I think that this piece of paper missing contains the signature of the officers and the connection of the boundary lines from the court to the cuchillo del Jaspe, the summit of the cuchillo del Jaspe.

Q. Did it contain anything else that you remember?

A. I do not remember.

Q. Did you know Antonio Sandoval?

A. Yes, sir.

Q. How long since you knew him?

55 A. I knew him since the year fifty-four to the year sixty-one.

Q. Did Antonio Sandoval, to your knowledge, occupy any official position under the Mexican government?

A. He occupied.

Q. How do you know?

A. I knew it through his records.

Q. This grant that he speaks of made by Antonio Sandoval, do you know whether there was any action by any other Mexican authorities on it?

Mr. REYNOLDS: I object to him proving by witness the action of any Mexican authorities as not proper evidence.

By the COURT: Question omitted and answer taken subject to objection.

Q. (Last question repeated to witness.)

A. As I understand it, the then general (puesto general) gave him the authority to do it, who was Armijo at the time.

Q. What does he understand Armijo did?

A. As I understand, Armijo granted them the land, and he issued the order to Antonio Sandoval to give them the land.

Q. After the land was given was there any other official action?

A. I do not know if he ever made any other but the original that they gave them.

56 Q. You say that you know Governor Armijo made an order to the prefect Sandoval to make this grant?

Mr. REYNOLDS: I object to the form of the question as a misconstruction of the answer of the witness, and I object to the language of counsel being substituted for that of the witness.

By the COURT: The question is objectionable.

Q. How did this order you speak of to Antonio Sandoval reach Antonio Sandoval?

A. The older people said—I don't know it myself—that General Armijo ordered them to go to the prefecture of Antonio Sandoval; that he might give the land to these petitioners.

Q. Was that a verbal or a written order?

A. I understand it must have been in writing.

Q. Who gave that order of Armijo's to Antonio Sandoval?

A. I understand that Gaspar Atencio and Juan Jose Garcia.

Mr. REYNOLDS, U. S. attorney: I object to this testimony as being without any foundation and subject on its face to manufacture.

Which objection was by the court sustained; to which ruling of the court the plaintiff- then and there duly excepted at the time.

At this point a recess was taken until two o'clock.

57 At two o'clock court resumed its session, and the case of Manuel Crespin *et al. vs.* The United States was proceeded with.

MANUEL CRESPIN on cross-examination.

By Mr. REYNOLDS, U. S. attorney:

Q. How old did you say you were?

A. Fifty-two years.

Q. When did you move to San Antonito?

A. In the year 1863.

Q. Where did you go from?

A. San Antonio.

Q. Where is that?

A. About six miles from San Antonito.

Q. You took these papers, 9, Exhibit A, and took them to the recorder at Albuquerque in 1857 and had them put on record there, didn't you?

A. Yes, sir.

Q. You did that so that everybody might know that you had these papers?

A. Yes, sir.

Q. And when you got ready to file—and when you commenced to get ready to file the case in this court you got together and discussed these papers, didn't you?

A. Yes, sir.

Q. And you sent for your lawyers?

A. Yes, sir.

58 Q. And you found that you didn't have any grant from the governor, didn't you?

A. Yes; we found ourselves without the original.

Q. And the attorneys told you that you must account for these originals in some way, didn't they?

A. They have not advised us.

Q. Didn't you talk with them about the condition of the title papers?

A. Yes; we did talk about it.

Q. You testified that you had a title from the governor, and your lawyer told you you had better account for it if you could—make a search for it?

A. Yes.

Q. And he told you that it was necessary to find that in order to show that it came from the governor?

A. We have not received any counsel from anybody nor from him.

Q. Did you discuss among yourselves the fact that you must have a grant from the governor?

A. Certainly; we looked for it and are still looking for it.

Q. You do not expect to find it, after this burn-down?

A. We do not hope so.

Q. You knew it was burned before this suit was brought, didn't you?

A. The grantees told us it was so.

59 Q. You understand this to be a copy of the original, do you? (Exhibit A s-own witness.)

A. Yes, sir.

Q. This is the grant you got from the governor?

A. No, sir; that's a copy.

Q. That is a copy of the grant you got from the governor?

A. That's the way I understand it.

Q. It is the copy of the one they said they come to Santa Fé to get, is it?

A. That's the way I understand it.

Q. That's the only one you have ever understood anybody to have had?

A. No reply.

Q. They never had any other paper except this, the original from which this is a copy?

A. Yes; that's all.

Q. Never claimed to have any others, did they?

A. We looked after it, but we didn't find it.

Q. You didn't claim to have any other papers except this and the original of which this is a copy?

A. This and the original.

Q. You never claimed to have any except these two papers, the one that was left with Sandoval and this one?

A. Yes.

Q. You never heard of any other?
60 A. No, sir.

Witness excused.

J. FRANCISCO CHAVES, being introduced as a witness on behalf of plaintiffs, testified in English as follows:

Direct examination.

By Mr. HOWARD, for plaintiffs, and Mr. EARLE also:

Q. State your name and age.
A. J. Francisco Chaves; fifty-nine years passed is my age. My residence is Los Lunas, Valencia county, New Mexico.
Q. State what military positions you have held under the Government of the United States.
A. Lieutenant colonel of the First New Mexico volunteers.
Q. Have you held any civil positions?
A. Postmaster, Delegate to Congress, several times member of both branches of the territorial legislature, and am member-elect of the council, the upper house of the legislature.
Q. Did you know Antonio Sandoval in his lifetime?
A. Yes; very well.
Q. Was he related to you?
A. By marriage; he married a great-aunt of mine.
Q. Did he hold any official position under the government of Mexico?
A. Yes, sir.
Q. State what it was.
61 A. He was prefect on several occasions, and held a military position. I forget now the exact character of it. My impression is that he was an inspector.
Q. Do you remember what time he died?
A. Yes, sir; not the exact date. He died, I think, early in February, 1861.

(By Mr. EARLE:)

Q. Colonel Chaves, do you know anything about his having his house robbed and any papers destroyed? And, if so, just state it.
A. I know by common rumor, and he stated the fact himself to me some time. I was under the impression it was in 1860, in the winter. Some discharged soldiers went to his house for the purpose of robbing him, as it was the general impression that he had large amounts in his house, and they insisted upon his showing where the money was. He said he had no money—that is, to amount to anything—and then they tortured him. They took a large board down, which he showed me himself and on which they laid a number of papers, many of which he said were very valuable, and set those documents on fire and held him over them, but holding him under the arms, and blistered him feet, and I know at the time I saw him

he still had blistered feet. I don't know how long before that it occurred.

Q. Do you know whether those were prefect papers or filing papers?

A. From what he stated to me, they were very important papers.

62 Q. Have you any information as to his house having been burned?

A. Yes, sir, a portion of it; but I think the burning of his house was previous to that. I don't think it had any connection with this robbery.

Q. Have you any information as to the papers and records that were burned at the time his house was destroyed?

A. No, sir.

Q. Do you know whether or not he was a prominent man in the community?

A. Yes, sir.

Q. Do you know whether it was the custom of people to trust him with valuables, &c.?

A. Not him in particular. It was the custom in those days for the people—a certain class of people—to trust their documents to prominent men. It is a fact that they trusted them to him.

Q. Do you know Juan Armijo, the judge of record at Albuquerque?

A. Very well, sir.

Q. Have you any information as to the burning of his house and the records in it?

A. I know his house was burned, but whether there were any records I don't know.

Q. Well, do you know of any destruction of any records of Bernalillo county?

A. Yes, sir.

63 Q. Just state what you know about it.

A. I think it was in 1882 that burglars entered into the clerk's office and took a large number of documents from there. Some were set fire to and others were thrown in the river; and I think that was the date. Subsequently some of those papers were discovered as a portion plundered at that time—on the sand—and were brought back.

Q. What were the nature of those records?

A. They were district court records.

Q. Do you know whether they pertained to land papers?

A. Some of them did and some didn't.

Q. I will ask you if you are familiar with the records in the surveyor general's office.

A. Somewhat.

Q. I want to ask you about Book B.

A. Yes; I had occasion to examine it for a document for Sandoval at his request.

Q. What was Book B?

A. It was a record that was kept in accordance with the provisions

of the county court, or probably it must have been in accordance with the proclamation of General Kearney. I think probably that is correct, and by it the citizens of New Mexico were required and were bound to bring in their titles and record them. On this registry I know of a registry of Hugh M. Smith, near Duncan
64 Heights. That Book B I have had in my possession half a dozen times, the first time in examining a grant which Sandoval asked me to see about.

Q. Do you remember about the last time you saw that book in the surveyor general's office?

A. I think in the month of February, 1880, immediately after the driving of the last spike on this railroad—one or two days after that celebration.

Q. Do you know where that book is?

A. No, sir; except rumer that it has been lost.

Q. Do you know—have you inquired for it in the library of the surveyor general's office?

A. Yes, sir; I have once inquired, but I inquired from the clerk who is now dead. I asked him about that book—David J. Miller, who is now dead.

Q. Do you know of any other loss or destruction of records in 1870——

It is admitted by the defendant, The United States, that during the administration of Governor Pile some of the records and papers were lost and destroyed.

Q. I believe you stated that you were a lawyer by profession?

A. I did not.

Q. Is that a fact?

A. Yes, sir.

Q. Will you examine that paper? (Exhibit B shown witness.)

65 A. Yes, sir.

Q. Are you familiar with that form of a paper?

A. I have seen many such papers.

Q. What is that?

A. An hijuela or certificate of ownership of a piece of land granted by some public officer.

Q. Is that in the usual form?

A. Yes, sir; about the same.

Q. From the possession of that paper what would you infer as to the condition of the land?

Mr. REYNOLDS: I object to it as incompetent and as calling for the legal opinion of the witness as to the effect of the instrument.

Question withdrawn.

Q. I want to know whether from that paper you would infer that a grant had been made to that land—whether a grant would be a necessary prerequisite to the issuing of such a paper as that.

Mr. REYNOLDS: I object.

By the COURT: Objection sustained.

Q. Under the Spanish law and custom would a paper of that character—the character of the one you have in your hands (Exhibit B)—be issued without a grant or prior to a grant being made?

66 Mr. REYNOLDS: I object to the question because it is incompetent.

By the COURT: Objection sustained.

Q. Do you know the person who executed or signed that paper?
A. I do not.
Q. Do you know of him by reputation?
A. No, sir.

Cross-examination.

By Mr. REYNOLDS, U. S. attorney:

Q. Colonel Chaves, the district court papers and records that were found on the banks of the river—were they papers that had been filed in the district clerk's office and bearing upon the class of litigation before that court?

A. Some of them were. There were two or three land papers; as to how they got there I don't know. While I was district attorney I looked over these papers. It seemed quite strange how they got in there unless some parties by ignorance may have deposited them there.

Q. It was not the proper legal depositary of title to real estate?
A. No, sir.
Q. Do you know whether or not instruments recorded in Book B, that was kept under the provisions of the Kearney code, were
67 instruments — were brought in, and that there were endorsements on those instruments to show that they had been?
A. Usually so.

Witness excused.

Mr. HOWARD: We offer the deposition of Ramon Zamora taken before Justice Fuller, at Albuquerque, on the 8th day of September, 1892.

Marked Plaintiffs' Exhibit E.

Which said Exhibit E is in the words and figures following, to wit:

The following stipulation by and between counsel herein was offered and by Justice Fuller ordered placed at the head of and to proceed- the depositions taken in this cause:

Stipulation.

"It is hereby stipulated and agreed that upon the trial of this cause either party may object to any question or answer for competency or irrelevancy, as well as to the competency of the testimony as a whole."

RAMON ZAMORA, of lawful age, upon being first duly sworn, testified on behalf of plaintiffs as follows:

Direct examination.

By Mr. HOWARD, plaintiffs' attorney:

Question. What is you- age and residence?
Answer. I live at San Antonito; my age going on seventy-nine.
68 Q. In what county is San Antonito?
A. In the county of Bernalillo.
Q. Do you know whether there ever was a grant of land at San Antonito?
A. Yes, sir; the same one that was given us.
Q. Were you one of th- grantees?
A. Yes, sir.
Q. Was there possession given—official possession given to you of this grant by the Government?
A. I think so, because we sent a man to Santa Fé.
Q. What did they send a man to Santa Fé for?
A. Sent him to ask for the land.
Q. What followed it?
A. Well, a partition was ordered to be made. We went out and were partitioned according-. The first one to be measured out was Dionicano Atencio.
Q. Who made this measurement or partition?
A. Don Jose Trujillo as judge.
Q. Where did this judge reside?
A. At the Rancho de Albuquerque.
Q. Did the judge made a measurement in partitioning the lands?
A. The same judge.
Q. Did the judge make any measurement and give you possession with any boundaries?
A. No, sir.
Q. Were any common lands given to you and designated
69 to you at the time?
A. Yes, sir.
Q. Did he show the outboundaries of these common lands?
A. Yes, sir.
Q. State what were the boundaries of these common lands.
A. When possession was given on the north was the pino cuate and the bald ridge (cuchilla pelado).
Q. What was the west boundary?
A. The springs or virtientes de los Sandia.
Q. What is the meaning of Ojo Virtientes?
A. The last springs.
Q. Where were these last springs situated?
A. Way high up in the mountains—the Sandia mountains.
Q. Is there any particular spring north of this west line, northwest corner?
A. The Samuel spring, as it is called, but it is far from the place.

A map is presented and witness asked:

Q. Which is the south boundary?
A. The top of the cuchillo del Jaspe.
Q. Which is the east boundary of this tract?
A. The Puerticito de los Huerteños.
Q. Is not this Puerticito de los Huerteños the southeast corner?
A. No, sir; the corner is away from it.
70 Q. Do you know where the Ceja del Potrio is?
A. It is there at the same place. It starts from the puerticito towards the north.
Q. Do you know where the Puerticito de los Indios lies?
A. Yes, sir.
Q. Has the Ceja del Potrio anything to do with the boundaries of this tract?
A. It reaches up to that place. That is the edge of it; that is the wall (indicating).
Q. And this Puerto del Indio—it is opposite the Ceja del Potrio, to the north—has that anything to do with the boundaries of this grant?
A. I believe so.
Q. What is it?
A. No, sir; but there is a line crosses this Ceja del Potrio, to find out the boundary.
Q. Do you know where is the Penasco Blanco?
A. I do not know which is the Penasco Blanco. This (indicating) is known as the cuchillo del Jaspe.
Q. Do you know where the Paraje de San Antonito is?
A. Yes, sir.
Q. Where is it?
A. Among the mountains by the springs—the mountains of Sandia.
Q. Is the Su- de San Antonito in this grant?
A. It is inside of the grant.
71 Q. Do you know where the Cedro Grueto is?
A. I used to know where was a cedro, but it is gone. The landmark is still there.
Q. Where is that?
A. Cuchilla de Pelado, on the north side.
Q. Is this cedar tree one of the boundaries of this grant?
A. Yes; and I would also say in this connection that the cedro naught (trunk), it is no more in existence; it is burned.
Q. When the judge gave you possession of this land did he give you any paper title and paper of any grant?
A. Yes; he gave us the original, and from that they took a copy that came to us, so that the original might remain in the power of Don Antonio.
Q. Don Antonio who?
A. Don Antonio Sandoval.
Q. Who was Don Antonio Sandoval?
A. He was a rich man that lived at Los Barelas.

Q. Did he occupy any official position at that time?
A. Yes, sir.
Q. What?
A. He was a prefect. At that time they were not called a prefect, but some other name.
Q. What became of that original document?
A. I do not know. I say it remained in the house and
72 power of Don Antonio, to be kept in the archives that he kept. That's the reason a copy was made to us, because if anything should happen it would be there.
Q. What became of that copy he gave you?
A. Yes; we have it here.
Q. Ask him if—why they could not get the original from Don Antonio Sandoval.
A. Because we could not find it; that is the reason we are appearing with this.
Q. What was the reason they couldn't find it among the archives of Don Antonio Sandoval?
A. I have said about that time there was a big conflagration and the house was burned.
Q. What house?
A. The house of Sandoval.
Q. Do you know Rumaldo Chavez?
A. Yes, sir; he was a son-in-law of the same judge, Jose Trujillo.
Q. Was he an officer of Trujillo's? Did he have any official position at that time?
A. He was only a clerk of the judge.
Q. Is he -live now or dead?
A. He is dead.
Q. Is Jose Trujillo living or dead?
A. He is dead.
73 Q. Do you know Vicente Zamora?
A. Yes, sir; he was my brother.
Q. Where did he live in 1840?
A. At San Antonito also.
Q. Was he one of the original grantees of this grant?
A. Yes, sir.
Q. Did not the judge give him a certificate of any land—of possession of the grant?
A. Yes, sir; he gave each one of us, and by that we knew our lands.
Q. What were these certificates (hijuelas)?
A. Yes, sir.
Q. Ask him if they were not in relation to lands that were divided up.
A. Yes, sir.
Q. At the time this partition and possession was given was there a plaza formed?
A. Yes, sir; the town was partitioned by himself.
Q. What was the town called?
A. San Antonito.

Q. Was the town divided up?

A. No, sir; the tract was given in common; one hundred and fifty varas to each of the cardinal points was given in common, and for each of our houses, pens, twenty-five more varas for the use of the canals.

74 Q. Have you lived there at San Antonito ever since?

A. Yes, sir.

Q. Are there any other persons or other descendants living upon the grant who are descendants of the original grantees?

A. I don't believe there is anybody; there was but one woman who took the land right.

Q. Ask him if there are descendants.

A. Yes, sir; there are; they have lived there from that time until this.

Cross-examination.

By Mr. TIPTON, special agent, representing the U. S. attorney:

Q. How far is it from the eastern to the western boundary of this grant?

A. It is very far; I do not know measures.

Q. How long would it take you to travel on horseback from the eastern to the western boundary?

A. About an hour at most.

Q. How many leagues do you think it is between those two boundaries?

A. Maybe two miles.

Q. How far do you think it is from the northern to the southern boundary?

A. I do not know; I can't on my oath—I cannot state because *be* are not in a habit of measuring distances.

75 Q. Is it as far from the north to the south boundary as it is from the east to the west boundary?

A. The space is larger from east to west.

Q. How many people are living on this settlement of San Antonito?

A. Many; it reaches up to twenty-five or thirty families.

Q. Is that the only settlement on the grant?

A. ——.

Q. Well, how far is San Antonito from La Tijura?

A. About six miles.

Q. What direction is La Tijura from San Antonito?

A. It is to the south.

Q. La Tijura is not situated within the limits of this grant?

A. No, sir; it is very far.

Q. Is San Antonito situated upon any stream?

A. There is only one; that is the only stream that runs there.

Q. What is the name of the stream?

A. They call it the San Antonito stream.

Redirect examination.

By Mr. HOWARD, plaintiffs' attorne-:

Q. When Don Antonio Sandoval made this grant to you he was a prefect, you say?

A. Yes, sir.

Q. Does he know what, if any, authority Don Antonio had to make this grant?

76 A. The order came from Santa Fé—the authority he had as prefect; maybe he was ordered from Santa Fé to make the grant.

(Here dispute arose between counsel and interpreter, and interpreter was requested to ask witness—)

Q. Did you not say that you believed the order came from Santa Fé to make this grant?

A. Yes, sir; because the men went up there to petition for it.

Q. Was the grant made after these two men came back from Santa Fé?

A. After the land was partitioned.

Q. Ask him if the land was partitioned after the men came back from Santa Fé.

A. Yes, sir.

Q. Who were those men who went to Santa Fé?

A. Gaspar Atencio and Juan Jose Garcia.

Q. Were they grantees of the grant?

A. Yes, sir.

Q. Were they in the partition? Did they have any land partitioned to them?

A. Yes, sir.

Q. Are they alive?

A. No, sir.

Q. Are their descendants alive?

A. Some of them.

Q. Do some of them live on this grant?

77 A. No, sir; they do not live there.

Recross-examination.

By Mr. TIPTON, special agent, &c.:

Q. Did you know Don Antonio Sandoval personally?

A. I knew him just as well as I know my own hand.

Q. Did you ever have any conversation with him in regard to the making of this grant?

A. Yes, sir.

Q. Did he tell you he had authority as prefect to make a grant of lands?

A. Yes, sir.

Q. When did he tell you that?

A. When the partition was made.

Q. Was he present when that partition was made—on the ground?

A. No, sir.

Q. Where was it you had this conversation with him where he stated he had authority to make a grant?

A. At his own house.

Q. In what place?

A. At Los Barelas.

Q. Did he show you any written authority he had from the governor of New Mexico?

A. He simply told me he had authority to make a grant while we were conversing.

78 Q. That's all you know about what authority he had to make a grant of lands?

A. That is all.

This was all the testimony.

I hereby certify that the foregoing is a true and correct transcript of my notes of the testimony of Ramon Zamora taken on the day, at the place, and in that behalf before stated, as given by Mr. Eusebio Chacon, the official interpreter of the court of private land claims.

LUMAN F. PARKER, JR.,
Official Stenographer Court of Private Land Claims.

Which said Exhibit E of Plaintiffs' Deposition of Ramon Zamora bears the following endorsements, to wit:

"Depositions of witness taken before the Honorable Thomas C. Fuller, associate justice, at the city of Albuquerque, county of Bernalillo, Territory of New Mexico, on the 8th day of September, A. D. 1892. Present as counsel: Mr. Geo. Hill Howard, attorney for plaintiffs; Mr. Will. M. Tipton, special agent court of private land claims, representing the U. S. attorney; Mr. Eusebio Chacon, official interpreter; Mr. L. F. Parker, Jr., official stenographer. Filed in my office this 8th day of December, 1892. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk."

The United States, by its attorney, declines to offer any testimony, but respectfully submits the case.

79 And be it further remembered that afterwards, to wit, on the seventeenth day of December, the same being the — day of the term of this court, commenced on the twenty-ninth (29) day of November, A. D. 1892, the following further proceedings were had, to wit:

MANUEL CRESPIN *et al.*, Plaintiffs,
vs.
THE UNITED STATES, Defendant. } No. 27.

In the above-entitled cause the court announced that the same would be continued until next term, and plaintiffs in this case are granted leave to file briefs.

And be it further remembered that afterwards, to wit, on the tenth (10) day of March, A. D. 1893, the same being the third day of the term of this court, commenced on March 8th, 1893, the following further proceedings were had, to wit:

MANUEL CRESPIN *et al.*, Plaintiffs,
vs.
THE UNITED STATES, Defendant. } No. 27.

Now come the petitioners, by their attorney, Geo. Hill Howard, Esq., and the defendant, by Matt. G. Reynold, Esq., United States attorney, and, this cause being submitted at a former day of
80 this court and the court being fully advised in the premises, it is considered by the court that the petition of the petitioners in the above-entitled cause be, and the same is hereby, dismissed and the grant rejected.

And be it further remembered that afterwards, to wit, on the seventeenth day of March, A. D. 1893, the same being the ninth day of the term of this court, commenced on the eighth day of March, 1893, the following further proceedings were had, to wit:

MANUEL CRESPIN *et al.*, Plaintiffs,
vs.
THE UNITED STATES, Defendant. } No. 27.

Now come the plaintiffs in the above-entitled cause and move the court for an appeal to the Supreme Court of the United States from the decision rendered herein.

GEO. HILL HOWARD,
JEFFRIES AND EARLE,
Att'ys for Plaintiffs.

Appeal allowed as prayed for.

JOSEPH R. REED,
Chief Justice.

Santa Fé, N. M., March 17, 1893.

81 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico,

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing eighty (80) pages contain a full, true, and complete transcript of the records and files in my

office in the case filed herein, in which Manuel Crespin and others are plaintiffs and The United States of America is defendant, for the confirmation of a certain claim or grant commonly known as the "San Antonito."

Witness my hand and the seal of this honorable court this the twentieth day of May, A. D. 1893.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk*,
By IRENEO L. CHAVES,
Deputy for New Mexico.

Endorsed on cover: Case No. 15,415. Court of private land claims. Term No., 42. Manuel Crespin *et al.*, appellants, *vs.* The United States. Filed October 7th, 1893.

No. 6.

Brief of Cards for Appt.

Filed Oct. 12, 1897.

FILED
OCT 12 1897
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States

OCTOBER TERM, 1896.

No. ~~42~~ 6.

MANUEL CRESPIN ET AL., *Appellants*,

vs.

THE UNITED STATES.

Argument for Appellants.

HENRY M. EARLE,
Attorney.

PRESS OF W. F. ROBERTS, WASHINGTON, D. C.

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 42

MANUEL CRESPIN ET AL., *Appellants*,

vs.

THE UNITED STATES.

This case rests upon a grant in writing, made by Antonio Sandoval, an officer of the Mexican government, to the community of San Antonito, on March 24, 1840. The grant document is in the customary and usual form, and consists of a petition, order, report, granting decree and certificate of juridical possession. The original cannot be found, but a *testimonio*, or copy, is produced by the proper custodians—the grantees.

In McPhaul *vs.* Lapsley (20 Wall., 264) it was held that a *testimonio* under the Spanish law is considered as a second original and of equal validity with the original itself.

This *testimonio* is somewhat mutilated, but the contents of the missing portion have been substantially proved.

The delivery of juridical possession is also shown by two of the original grantees, who, with their co-grantees, their descendants and legal representatives, 300 or more in number, have continued in the peaceable and undisputed possession of the tract from that time to the present day. There are no adverse claimants.

The tract has never been officially surveyed, but its natural boundaries are well defined and certain.

It is admitted herein (Record, p. 33, f. 64) and shown in the case of United States *vs.* Chaves (159 U. S., 452) that the archive records of New Mexico were destroyed and lost.

and it is part of the history of the Territory that they were scattered to the four winds during the administration of Governor Pile, through no fault or negligence of any of these land claimants.

THE AUTHORITY TO MAKE THE GRANT.

The petition was dismissed by the court below because authority to make the grant was not shown by some positive law or regulation of the Mexican government, it being assumed to have been made by a "prefect."

The grant in question does not purport to be made by a prefect. It is signed "SANDOVAL," and we must turn to the evidence and to the history of the country in order to ascertain who Sandoval was and in what capacity he acted.

The testimony shows that he was, at or near the time of making this grant, a prefect (p. 31, f. 61; 21, f. 41).

It seems that there has been brought to light no law or regulation expressly empowering prefects to make grants of land generally; but it is a fact that these officers, from the date of their creation in 1836 to the change of flag, did exercise this authority, and made several grants which were subsequently confirmed by the Congress of the United States, to which reference was made in the court below (15, f. 29). As to the effect of such confirmations on similar grants, in United States *vs.* Arredondo (6 Pet., 691, 713, 727) the Supreme Court says:

> Where Congress has, by confirming the report of commissioners or other tribunals, sanctioned the rules and principles on which they were founded it is a legislative affirmance of the construction put by these tribunals on the laws concerning the authority and prescribing the rules by which it should be exercised; or what is to all intents and purposes, of the same effect in laws, it is a legislative ratification of an act done without previous authority; and this subsequent recognition and adoption is of the same force as if done by pre-existing power, and relates back to the act done.
> * * *

> "If it were not a legal presumption that public and responsible officers, claiming and exercising the right of disposing of the public domain, did it by the order and consent of the government in whose name the acts were done, the confusion and uncertainty of titles and possessions would be infinite."

Mitchell *vs.* United States (9 Pet., 641), the Supreme Court says:

> "The confirmation of similar grants, made by acts of Congress or by boards of commissioners acting under their authority, is also powerful evidence of the lawful exercise of the authority of these officers, and, being proceedings under the treaty and laws, they are made a rule by which, among others, we may adjudicate on the claims of the present parties."

These prefect grants were invariably made to communities and towns, and in no instance, as far as can be ascertained, has one been made to a single individual.

The nearest approach to a positive law authorizing prefects to make grants of land of the character above mentioned will be found in paragraph 77 of the law of March 20, 1837 (Land Laws of Spain and Mexico, Reynolds, 221), which is as follows:

> "77. They (prefects) shall regulate, administratively and in conformity with the laws, the distribution of the common lands in the towns of their district, providing there is no litigation pending in regard to them, the right being reserved to the parties in interest to apply to the governor, who, without further appeal, shall decide what is most proper, with the concurrence of the departmental council."

It was under this they acted. No grant was made by them in New Mexico prior to that time. The proceedings under this grant were in the nature of a *denouncement;* the former grantees had abandoned the land for fifteen years (6, f. 11). No "litigation" was "pending," and the distribution of the prefect became final. In one case cited by appellants in the court below, that of the town of San Pedro, there was "litigation pending," and the matter was referred to the governor, who confirmed the grant made by the prefect.

The prefects construed this law as conferring authority on them to grant lands to communities and towns; this construction was acquiesced in by the Mexican government, through the governor, and by the United States, through the confirmation by Congress of similar grants.

The prefect was a territorial officer next in rank to the governor, and was appointed by him (decree of December 29, 1836; law of March 20, 1837). During the latter's absence or sickness he was frequently delegated to act in his place, and by paragraph 20 of the law of March 20, 1837 (*supra*) the governor was authorized thus to delegate. Manuel Armijo, the then governor, was a man of unusual activity. In the insurrection, Texan invasion and Indian campaigns during his long term of office, he took the field in person, and delegated one of his prefects to act during his absence. In 1839 the title of *commandante-general* was bestowed upon him.

These appointments, when he was absent for any considerable period of time, are matters of history, and thus we find that in 1841 Antonio Sandoval performed the duties of governor while Armijo was repelling the Texans (Bancroft's History of New Mexico and Arizona, 310, 315, note). Subsequently three others acted at different times (*ibid*).

The evidence shows that the original grantees herein went first to Santa Fé, the seat of the territorial government, to obtain a grant from the governor himself (18, f. 35; 39, f. 76). It does not appear whether or not they saw the governor, but it is in evidence that they were directed to apply to Antonio Sandoval. At the time of the grant Sandoval was called by some other name than "prefect," but the witness does not remember what it was (37, f. 71); he held various positions under the government (31, f. 61).

Now, the reasonable conclusion arising from these established facts is that Manuel Armijo was in the field, performing the duties of *commandante-general*, at the time this grant was petitioned for, and had delegated his civil authority to the next

man in official station, namely, the prefect of the district, Antonio Sandoval.

The appointment of Sandoval as acting governor the year following the granting of this land was a ratification of the acts done by him prior to that time, and operated as a confirmation of this grant.

THE GOOD FAITH OF THE GRANTEES.

The original grantees, 27 or 28 in number (9; 14, f. 27), were placed in possession on the 29th day of March, 1840, and they have, with their descendants and legal representatives, remained in the continuous and undisturbed occupancy of the tract to the present day (38, f. 74), cultivating and improving the same, making it a home for themselves and their families, raising thereon their children and grandchildren, and passing their little lots and houses by will or operation of law from generation to generation.

At this time there are 300 or more residents on the land claiming by virtue of this grant (19, f. 37; 27, f. 53). There are no adverse claimants (37, f. 53; 38, f. 74), and no adverse claims were filed in the court below.

The absolute good faith of the appellants is beyond cavil.

PRESCRIPTION.

The grantees and their legal representatives have now been in possession of the tract for more than 56 years; they went in under color of title, and their absolute good faith is shown.

In the Spanish dominions all the public lands belonged to the crown, but a possession of 40 years was sufficient to prescribe even against the king. *Liber 11, title 8, law 4*, of the *Novissima Recopilacion*, declares—

> "Seeing that some persons in our dominions hold and possess some cities, towns and places, and civil and criminal jurisdictions, without having a title for the same from us, nor from the kings, our predecessors, and

> it has been doubted whether the above-mentioned can be acquired from us and our crown through time, we ordain and order that possession immemorial, when it is proved how and when, and with the circumstances required by the law of Toro (which is *law 1, title 17, liber 10*, is sufficient to prescribe against us and our successors as regards cities, towns and places, and civil and criminal jurisdictions, and anything growing out of these, and everything belonging to that lordship and jurisdiction annexed: *Provided, always*, that the time of the aforesaid prescription be not interrupted or broken by us or by our order, or of others in our name, naturally or civilly. But the supreme jurisdiction, civil or criminal, which kings possess by greatness and royal power, which is to act aed to enforce where other lords and judges fall off, we declare that this cannot be obtained nor prescribed through said time, nor any other; and, in the same way when the laws say that things of the kingdom cannot be obtained thro' time, it is to be understood the dues and tributes to us belonging."
>
> 2 White, 736.

Law 14, title 12, liber 4, likewise recognizes a "just prescription."

And by the royal regulation of October 15, 1754, "long possession" is a "just title by prescription" in certain cases, although the persons claiming went into possession without color of title whatever.

Possession has always been given the greatest weight in considering imperfect claims or grants.

See U. S. *vs.* Wilson, 1 Black 267.

U. S. *vs.* Chaboya, 2 *Ib.*, 593.

U. S. *vs.* Rocha, 9 Wall., 639.

In Serrano *vs.* United States (5 Wal., 451), the court says:

> "If claimant had entered into possession under a claim of right, and had title papers, though imperfect, he might say that the length of his possession entitled him to the favorable consideration of the court."

In the case of United States *vs.* Alviso (23 How., 319), there was a mere permission to occupy the land until the title

was perfected. Under this license the claimant occupied the land for 14 years. There was no evidence whatever that the title was ever perfected, but the court sustained the claim.

On July 16, 1819, the king of Spain decreed that—

> "2. In the absence of other title, a just possession, that is a possession of 40 years, duly proved according to law, shall be admitted and respected.
>
> "3. Those who have acquired lands by grant, purchase, agreement or *prescription*, have a right to dispose freely of them, whether said lands be in a state of cultivation or otherwise.
>
> 2 White, 562.

The want of approval by the constituted authorities will not affect the *validity* of a grant.

U. S. *vs.* Johnson, 1 Wall., 326.

Hornsby *vs.* U. S., 10 *ibid.*, 224.

This was the law as it existed at the time of the independence of Mexico, and it remained the law of that country until expressly changed.

In the case of United States *vs.* Chaves (159 U. S., 452), in passing upon the validity of a grant that was proved *wholly by parol*, the Supreme Court said:

> "There is the weighty fact that for nearly 60 years the claimants and their ancestors have been in the undisturbed possession and enjoyment of this tract of land.
>
> * * *
>
> "Without going at length into the subject, it may be safely said that by the weight of authority, as well as the preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for 20 years, and that such rule will be applied as a *presumptio juris et de jure* wherever by any possibility a right may be acquired in any manner known to the law."

In Beard *vs.* Federy (3 Wall., 479) the court says:

> "A right or title from the Mexican government need not necessarily be evidenced by writing. It may in

> some instances rest upon the general law of the land, as was usually the case with title of municipal bodies to their common lands."

Mr. Justice Field, in the case of United States *vs.* Pico (5 Wall., 536, 540), speaking of the methods whereby lands were obtained in the Mexican territories, says :

> "A pueblo [town] once formed and officially recognized became entitled, under the laws of Mexico, to the use of certain lands for its benefit and the benefit of its inhabitants, and the lands were, upon petition, set apart and assigned to it by the government. No other evidence of title than such assignment was required, nor was any other given."

In Brownsville *vs.* Cavazos (100 U. S., 138) it was held that by the laws in Mexico in force in 1826 a pueblo or town became entitled to four square leagues when recognized.

It is very evident, therefore, that the grant in question is one which the republic of Mexico would have recognized, and, under its usages and customs, was bound to recognize ; it belongs to a class which the government of the United States, through Congress and the courts, has repeatedly recognized ; and it is one which the act of March 3, 1891, executing the provisions of the treaty of Gaudalupe Hidalgo, empowers this court to confirm. The act was remedial in its nature, and a technical construction should not be placed upon it. The intention of Congress was not to confiscate the homes of these unlettered claimants, nor to throw them on the tender mercies of the land speculator. We submit that, in a case like this, the claimants are not bound to show to the exclusion of every other possible hypothesis that the officer making the grant had authority to do it. The equities are all with the appellants, and they are absolutely without remedy except in this forum.

Respectfully submitted,

HENRY M. EARLE,

Attorney for Appellants.

ASSIGNMENT OF ERRORS.

1st. Error in not holding that grantees had perfect title by prescription.

2nd. Error in holding prefect had no authority to make this grant, under the laws of Mexico.

3rd. Error in not holding that this grant is one that Mexico was bound to confirm and that the United States should have confirmed under Section 13 of an Act of Congress approved March 3, 1891.

4th. Error in not holding title perfect at date of change of flag.

5th. Error in holding that granting power was without authority.

6th. Error in finding contrary to the evidence.

7th. Error in not finding that the petitioners were entitled to a confirmation of this grant.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

MANUEL CRESPIN ET AL., APPELLANTS, v. THE UNITED STATES. } No. 6.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

STATEMENT, ABSTRACT, AND BRIEF.

On the 12th day of August, 1892, MANUEL CRESPIN and others instituted suit in the Court of Private Land Claims for the confirmation of what is commonly known as the SAN ANTONITO GRANT, situated in Bernalillo county, territory of New Mexico, and alleged to contain thirty-two thousand acres. The plaintiffs claimed said grant as the heirs and legal representatives of the original grantees, and it is alleged in the petition that on the 24th of March, 1840, the republic of Mexico, through Antonio Sandoval, the prefect of the district of Bernalillo, thereunto duly authorized by the laws, usages, customs, superior orders, and decrees of the republic or of its duly

constituted and competent authorities, donated, adjudicated, granted, set apart, and delivered the possession unto Dionicio Atencio and twenty others named therein, of that certain tract of land situated in and upon the Cañon of San Antonito, surrounding the *placita*, place, or town of San Antonito, about twenty-five miles east of the city of Albuquerque; that the original grant document or *expediente* of title remained in the office and formed a part of the archives of said prefect of the district of Bernalillo; that the *testimonio* or official copy was at the time delivered unto the grantees and served them as evidence of a complete, valid, and final title in fee.

It is further alleged that, notwithstanding they have made diligent search therefor, they are unable to find the original *expediente* of said grant, from which the alleged official *testimonio* was taken; it is also alleged that the original *expediente* formed a part of the public archives from the date of said grant until the territory became a part of the United States, and that at divers and various times thereafter large portions of the same were lost, destroyed, or stolen, including the said *expediente*, wherefore they are unable to produce the same or a record thereof in court. It is further alleged that the *testimonio* or official copy of the *expediente* remained in the possession of said grantees and their legal representatives until about ———, when the same was lost or stolen, and notwithstanding diligent inquiry and search therefor they have been unable to find the same.

It is further alleged that on the 10th day of April, 1840, while the said *expediente* was in the archives of the prefecture of the said district of Bernalillo, a *testi-*

monio or true copy thereof was made, purporting to be for and the property of one Rumaldo Chavez, which alleged copy is filed with the petition as Exhibit A. (R., 6–9.) That said copy was prior to 1846 transferred and delivered by said Rumaldo Chavez, by endorsement thereon, unto Gaspar Atencio, one of the grantees of said grant, for his uses and purposes, and has ever since remained in the possession of the said Atencio and his legal representatives and the petitioners.

That on the 25th day of October, 1886, the petitioners filed the same in a complete, perfect, and intact condition, for record in the recorder's office of the county of Bernalillo, New Mexico, but that after filing the same and prior to the record thereof made December 28, 1886, and while the same was in the possession of said office, about one-half of the last half of the last folio or sheet of said document was lost, and the said record was made exclusive of said lost portion, wherefore plaintiffs are obliged to present and file the same minus the portion lost, as aforesaid, and will upon the trial of the cause, being allowed thereto, prove the contents of said lost portion of said instrument. (*Note:* This lost portion was found subsequently to the filing of the petition and filed as fragmentary portion of Exhibit "A" [R., 15]. The allegations of the petition with reference to the contents of this fragment it is unnecessary to notice, as, as has been stated, the same has now been found.)

It is further alleged in said petition, upon information and belief, that the grant was finally confirmed and approved by governor Manuel Armijo and the departmental assembly; that on the 4th day of March, 1840, under

and by virtue of said donation, adjudication, and grant, the designation of the exterior boundaries and the allotment of one hundred varas running from the north to the south boundaries of said grant in severalty to each of said grantees, the laying out and measuring of the *placita* of said town of San Antonito, and the allotment to each of said grantees of a lot in severalty therein, was all had, made, and done, and the juridical possession of the whole thereof given unto the said grantees by José Trujillo, under and in accordance with the decree of said prefect, and the superior orders, laws, customs, and usages then obtaining and in force in said territory; that said grantees obtained the grant and the possession thereof in good faith, and they and their descendants and legal representatives (the petitioners) from the date of said grant and said juridical possession thereof up to the present time have usefully held and occupied and possessed the same, and the whole thereof, under and by virtue of said grant and the said juridical possession thereof, and that they now hold, occupy, and possess the same in fee against the whole world under and by virtue of said grant, openly and notoriously; that the said tract is about ten miles in length by about five miles in width, containing about thirty-two thousand acres.

With said petition is filed a sketch map of said grant, marked Exhibit "C." (*Note.*—By some oversight in making up this transcript, a copy of this sketch map was omitted.)

With said petition is filed, as Exhibit "B" (R., 14), a *hijuela* or certificate of ownership of one hundred *varas* of land in San Antonito, given on April 11, 1840.

It is further alleged that the petitioners are entitled to the land, not only by virtue of said grant, but by virtue of their continuous use, occupation, and possession of said premises under a claim of right thereto from the year 1840 up to the present time, and that the same was at the date of the acquisition of New Mexico by the United States held discharged of any condition, charge, or reservation, if any there was, and that the same was further assured to them by reason of their continuous, exclusive, open, and notorious use and occupation since the date of said grant in 1840.

That the form of said grant title is a written document, comprehending and showing all the steps and proceedings in the matter, which was duly executed and authenticated in accordance with the laws, superior orders, usages, and customs, when obtaining in the territory of New Mexico, and was in nature a complete, definitive town-community grant in fee simple; that there are no adverse claimants, holders, or possessors of the same, nor does it conflict with any other grant or claim derived from the Mexican or Spanish government; that the same was never presented to or acted upon by any constituted authorities of the United States. The petition concludes with the usual prayer for relief. (R., 1–6.)

The answer of the United States avers want of knowledge or information sufficient to enable it to form a belief as to whether on the 24th day of March, 1840, Antonio Sandoval was a prefect of the district of Bernalillo, and whether upon said day, pretending to act for the Mexican republic, he undertook to grant, set apart, and deliver possession of said grant, but it avers that if he did so,

it was without warrant or authority of law, and denies that the original *expediente* ever formed a part or parcel of the public archives of the territory of New Mexico and the republic of Mexico. It avers want of knowledge or information as to whether on the 10th day of April, 1840, while an alleged proof of said grant was in the archives of said prefecture, a true copy thereof was made purporting to be for and the property of one Rumaldo Chavez, but says that if such were the case, said archives of the prefecture were not the proper repository as provided by law for grants of public lands by the Mexican republic, and that the copy or certification thereof was without warrant or authority of law and imports no verity to said copy.

It further avers want of information as to whether said copy was, prior to 1846, transferred and delivered by said Chavez by indorsement thereon unto Gaspar Atencio, one of the original grantees, and as to whether the same has ever remained in the possession of said Atencio and his legal representatives, the petitioners. It is averred that the boundaries set out in said petition for said alleged grant were never authorized to be designated or defined for the lands alleged to have been petitioned for or granted, and that the said prefect never attempted to grant and never did grant the lands embraced within the boundaries set out in said petition, and denies that juridical possession was ever given to the lands described in plaintiffs' petition under and by virtue or the directions or orders of said prefect or anyone else, and denies that said alleged grant or any part thereof or any

act performed thereunder ever received the approval and confirmation of governor Manuel Armijo and the departmental assembly or anyone else lawfully authorized thereto.

It avers want of information as to whether or not on the 4th day of March, 1840, an allotment was made in severalty to each of said alleged grantees, and if the same was so made it was without warrant or authority of law and void, or as to whether the said alleged original grantees and their legal representatives have, since the alleged grant and delivery of possession to them, been in the actual, exclusive, and notorious possession of the same. It denies that said prefect ever granted said land to anyone in the quantity of thirty-two thousand acres, and denies that the tract alleged to have been granted by said prefect is ten miles in length by five miles in width; denies that the plaintiffs herein are or ever have been seized and possessed of the same by title in fee simple; denies that at the date of the acquisition of New Mexico by the United States the grantees or their legal representatives held the same discharged of any condition, charge, or reservation, and denies that by reason of said possession, if any they had since 1840, they have acquired any interest therein, either legal or equitable, and denies that whatever muniments of title may have been delivered to said alleged grantees, if any, were executed and delivered by anyone authorized by law to dispose of the public domain of the republic of Mexico, or that the same was ever recorded in the proper archives as required by law, and prays the rejection of the grant. (R., 12–14.)

It will be noticed from the allegations of the petition that this is to be classed under the head of what is commonly known as town or community grants.

Plaintiffs offered in evidence Exhibit "A," including the fragment. (R., 15.) To this objection was made on behalf of the United States, upon the ground that no connection was shown between the instrument and archives, nor was the instrument in any wise verified, and on its face shows that under the law the officer making the same had no authority to dispose of the public lands of Mexico, and also because it is but a copy of a copy, and uncertified by officials who had the custody under the law of grants and muniments of title derived from the republic of Mexico to lands in New Mexico, and that the whole of Exhibit "A" is only the act of inferior officials of the prefecture, none of which acts are authorized by the laws of Mexico without an original grant by the governor, and also for the reason that this land appears to have been granted prior to 1840 to Cristobal Armijo, and no proceeding of abandonment was shown to have ever been taken to forfeit the land to the government, making it subject to regrant. (R.,16–17.)

It appears by this instrument that on March 16, 1840, Juan José Garcia and Gaspar Atencio, residents of Albuquerque, petitioned the prefect, Antonio Sandoval, stating that they and their constituents finding themselves without tillable land upon which to subsist, and there being back of the Sandia mountain a tract called the San Antonito, the fertility of which and the increase of its waters all invite cultivation, and by this means the commendable promotion of agriculture and the progressive

benefit of the petitioners will be accomplished, stating the fact that it is fifteen years, a little more or less, since said tract was donated to Cristobal Jaramillo, deceased, yet moreover, in all this space of time the land had not been cultivated at all, "and if this has been forfeited in accordance with our laws we humbly beg your Honor to be pleased to grant us what we ask, as it is without prejudice to a third party, etc." (R., 6.)

At Barelas on March 21, 1840, prefect Sandoval made an order to the justice of the peace of Los Ranchos to report thereon. (R., 6–7.)

On March 22, 1840, José Trujillo, the justice, filed his report stating that after having fully informed himself, it is fitted for agriculture, very pleasing and very delightful for a life of tranquillity, and very favorable to everything most necessary for a favorable living. In relation to the need of the petitioners of land and property that may fully provide them with subsistence, he says that excepting Diego Garcia, José Miguel Griego, and Juan Lucero, who are known to have land, but they do not count upon it because they are indebted and have it secured by said lands, all the others have not such property. (R., 7.)

Upon this report the prefect makes the following endorsement:

"Barelas, *Mar. 24, 1840.*

"One of the most commendable and beneficial things to a people being the promotion of agriculture, let this petition be transmitted to the justice of the peace of Los Ranchos, in order that with all the customary formalities he give the possession solicited by the parties in interest, without prejudice to a

third party, and only for cultivation the lands necessary, *leaving free the pastures and watering places* which under no circumstances ought to be interfered with; and after this is done, he shall make a full report to this prefecture." (R., 7.)

In obedience to this decree, the alleged act of the justice of the peace is as follows:

In the jurisdiction of Los Ranchos de Albuquerque on the 27th day of the month of March, of the year one thousand eight hundred and forty, I, the citizen José Trujillo, justice of the peace of the same jurisdiction, in virtue of what is ordered by the prefect of this district in decree of the twenty-fourth instant, and in obedience thereto, in order to proceed in all things in compliance therewith and according to and as therein set forth, I ought to, and I do, order that notice be given to citizens Juan José Garcia and Gaspar Atencio, with all their constituents, grantees in the tract of San Antonito, that by the twenty-ninth day of the present month they shall assemble at the place designated and donated to make the measurements of the said tract, and, there being no opposition, the possession thereof will be given them as is ordered by the prefect in the decree already cited, and they are made grantees in accordance with law.

I, the present justice, by this decree thus provided, ordered and signed it, acting as a special justice with the two attending witnesses for lack of a notary public, of which there is none provided by law, to which I certify.

Immediately in said jurisdiction of Los Ranchos de Albuquerque, on said day, month, and year, I, the said justice of the peace, in virtue of what is ordered in the foregoing decree, cited and made known

to the citizens Juan José Garcia and Gaspar Atencio, and their associates personally, everything that is therein set forth, which they understood, and I signed it, to which I certify, with those attending as aforesaid.

At the Rito de San Antonito, on the twenty-ninth day of the month of March, of the year one thousand eight hundred and forty, complying with what has been decreed by the prefect, Don Antonio Sandoval, with the object of giving the possession referred to in these proceedings, and all the grantees being present, I took Juan José Garcia and Gaspar Atencio by the hands, saying to them that in the name of the Mexican nation (which may God preserve), I gave national and personal possession of said tract for cultivation, to them and all their constituents, without prejudice to the public, as to pastures and watering places. I conducted them over said tract, they pulled up grass, threw stones, and made other signs and demonstrations of possession, in which act the parties placed in possession, as well as the bystanders who were present, shouted, saying, "Long live the Mexican nation! Long may it live! Long may it live!" and they placed the tract under the sole possession of Saint Anthony (San Antonio), as it had previously been, with which they quietly and peaceably took their possession, and the measurement of the land among the grantees was proceeded with in the following manner:

(Here follows a list of twenty-seven names, with the number of *varas* allotted to each, being one hundred, save to Juan José Garcia and Gaspar Atencio, who received one hundred and fifty *varas*, aggregating in all two thousand eight hundred *varas*.)

The number of Castilian *varas* divided among twenty-seven individuals, who were the grantees,

being two thousand eight hundred, as appears from the foregoing statement, the fixed boundaries being where the sources of the water raise, which is on the west side, on the east the twin pine (*pino cuate*) to the little pass (*puertecito*) of the Los Huerteños, commonly so called, it being diagonally between east and south, and the twin pine itself being recognized as a boundary mark, and a mound of stones that was piled around the pine itself, which is on the north side, and the little pass of Los Huerteños is on the south side. In this the land is included by the said sides. On the north side the little ridge (*cuchillita*) which is opposite, and it ends in the vicinity of a thick cedar tree with a natural girdle upon it, to which was given as a further sign, a cross made on the tree itself, it being diagonally between north toward the twin pine. On the south side the face of the top of the ridge called the Jaspe, recognizing as a boundary mark a large rock (*peñasco*) which is in a straight line with the end of the little ridge mentioned on the north side, said possession being enclosed on the south side (torn) the said ride of the Jaspe and—

(Here follows the note of the clerk in making up the transcript: "Here nearly three-quarters of a page left blank.")

(I insert the fragmentary portion of this document, which was missing at the time of the filing, and has since been found [it will be found in R., 15], and is as follows:)

"* * * easements, with warning to all the new settlers on this land that they have no right to close the pastures and watering places, nor to obstruct the roads already made within their lines, under penalty of losing the land if they should do so, nor to go beyond the limits designated." * * *

The present justice, with those of his attendance, by his decree thus provided, ordered and signed it as aforesaid.

It is a copy made from its original to-day, the tenth of April, one thousand eight hundred and forty, belonging to Don Rumaldo Chavez.

RUMALDO CHAVEZ. (Scroll.)

I have copied this alleged act of possession in full, placing the detached fragment in its proper place, so that the form of the instrument may fully appear. (R., 7, 8, 9, and 15.)

From this act of possession it appears that on March 27, 1840, Trujillo, the justice, ordered that notice be given to Juan José Garcia and Gaspar Atencio and their constituents, grantees in the San Antonito, that on the 29th day of that month they should appear at the place designated and donated to make the measurements of the tract, and there being no opposition possession thereof would be given them as ordered by the prefect, and they made grantees in accordance with law; that on said day, the parties being assembled, including Juan José Garcia and Gaspar Atencio, he made known to them everything contained in the decree, which they all understood, and complying with what had been decreed by the prefect Sandoval, with the object of giving the possession referred to in this proceeding, and all the grantees being present, he took Juan José Garcia and Gaspar Atencio by the hand and in the usual form gave them national and personal possession of the tract to cultivate, *without prejudice to the public as to the pastures and watering places*, and they all being satisfied the

measurement of the land was proceeded with, allotting to each of twenty-five grantees one hundred *varas*, and to Juan José Garcia and Gaspar Atencio one hundred and fifty *varas*, in all allotting to the twenty-seven persons two thousand eight hundred *varas*. Then follows a statement fixing the boundaries within which the allotments were made; following this is the detached fragment which is found on R., 15.

It will be noticed that this copy was not made by Francisco Sarracino, the secretary of the prefect Sandoval, but by Rumaldo Chavez, the clerk of the justice Trujillo [see the testimony of Ramon Samora (R., 37)], and appears to have been made for the personal use of said Chavez and afterwards transferred by endorsement on the back thereof to Gaspar Atencio, who appears from the document to have been one of the leading petitioners and received according to the allotment one hundred and fifty *varas*. This endorsement is peculiar in its language, and is as follows:

> This copy is transferred in favor of the citizen Gaspar Atencio, belonging solely to him the right to make such uses of it as he may deem fit, as he has given me his money for it; and I, the undersigned, obligate myself, if at any time a doubt should arise as to whether this is an exact copy of the original grant which is in the office of the prefect, to pay him the damages which it may cause him.

This endorsement is incomplete, as the concluding portion has been torn off, and it is alleged in the petition (paragraph 7) that this endorsement was made prior to 1846, although there is nothing in the record to sustain this allegation.

Plaintiff next offered in evidence an *hijuela*, or certificate of allotment (Exhibit "B") which was executed on April 11, 1840, by José Trujillo (R., 14), purporting to show an allotment of one hundred *varas* of land at San Antonito to Vicente Samora under the decree of prefect Sandoval. Plaintiff offered as Exhibit "D" a notice to the United States attorney of his intention to refer to certain acts of congress confirming various alleged prefect grants. (R., 15.)

To further sustain the allegations of the petition, plaintiff called as a witness MANUELITA MARTINEZ, who testified that she resided at Antonito, in Bernalillo county; that she knows there was a grant made to herself and others of land at San Antonito, and as one of the grantees she received one hundred *varas* in the year 1840 from José Trujillo, the justice; remembers some of the names of the grantees, but does not remember who petitioned for the grant, but that some men got a certificate to show they had a grant, but does not remember who they were.

She also testified as follows:

> Q. Does she know who they came to see at Santa Fé, if anyone?—A. Don Manuel Armijo.
>
> Mr. REYNOLDS. The petition for the grant and the grant will show for itself, and it shows nothing of the kind.
>
> Q. Who was Don Manuel Armijo?—A. He was the governor; he was from Albuquerque.
>
> Q. Did they get anything from the governor; did they get any written document and written grant?
>
> By the COURT. Change the question.

Q. Did they obtain anything, and if so, what, from the governor?—A. They obtained it to be granted, and the paper went to the prefect.

Q. To what prefect?—A. Don Antonio Sandoval. (R., 18.)

Witness testified that she was twenty-seven or twenty-eight years old when the possession was given, and has lived there ever since. The sons of the grantees, whom she named, live there at the present time. (R., 17–19.)

JUAN OTERO testified on behalf of the plaintiffs that he was fifty-five years old and has lived at San Antonito thirty-six or thirty-seven years, and there are about sixty heads of families, or about three hundred people in all. Exhibit "A" was shown the witness, who says he knows it and it is the grant of San Antonito, and has known it for about twenty-five years, it being in the possession of Ramon Samora, one of the grantees, and that he obtained it from Juan José Garcia, one of the grantees. He never knew but had heard of one Gaspar Atencio, who, he says, died, and his family lives at Los Candelarios. He knows of another paper relating to the grant, which he identifies as the *hijuela* or certificate of allotment given by Trujillo to Vicente Samora, whose sons are living at San Antonito, and he knew him when he first went there; that the claimants took the paper away from the heirs of Vicente Samora and placed it in the hands of the attorney. He states that he knows the grant was given in 1840, but he knew it only from the grantees themselves in possession. The only instrument he has ever seen relating to the grant were the alleged copy of the *expediente*, and Exhibit "B," the *hijuela*.

Knew Antonio Sandoval, who was a prefect and lived at Los Barelas; knew of his house being destroyed by fire, and that some of the records of the country were therein lost, but what he does not know. The remainder of the testimony of this witness is with reference to the boundaries of the grant. The cross-examination shows that the only knowledge this witness possesses with reference to the grant is hearsay. (R., 19–23.)

GREGORIO GARCIA testified on behalf of the plaintiffs that he was fifty-nine years old and has lived at San Antonito for about thirty years. Upon Exhibit "A" being shown to him, he said he did not know how to read but he knows the paper, and it is an *hijuela*. He says the people claimed the land at San Antonito; he has an interest in the same and bought it from Manuel Crespin, it being sixty *varas*; says the other people at San Antonito hold their land by purchase from Don Serafin. (R., 23–24.)

MANUEL CRESPIN testified on behalf of the plaintiffs that he was fifty-three years of age, a resident of San Antonito since 1863, and owns four hundred *varas* of land there, obtaining it from the original grantees. Exhibit "B" was shown the witness, who says he has known it since 1863. It was in the possession of Vicente Samora. Exhibit "A" was shown the witness, who says he knows it, and that it is a copy taken from the original grant of San Antonito, and he has known it since 1863, first seeing it in the hands of Ramon Samora at San Antonito, who he says is still living at San Antonito. Witness states that the

original was left in the office of Antonio Sandoval by the authorized persons, Gaspar Atencio and Juan José Garcia, about the year 1840. He has heard from the owners that the archives were burned at Albuquerque. Knew Antonio Sandoval who lived at Los Barelas. He understood it was the office of the prefecture that was destroyed at Albuquerque, and the destruction took place in 1854 or 1857. He has made diligent search for the documents. He does not know whether Exhibit "A" was compared with the original or not, but supposes it must have been, because the petitioners told him they left the true original in the house of Antonio Sandoval. Knows the boundaries of the grant from Vicente Samora, Bartolomé Sanches, and Ramón Samora. There are about three hundred people living within the grant and claiming it. The tract is about ten miles from east to west and five miles from north to south. Says there is some difference in the paper now than when he first saw it, there being a piece missing. In 1857 it was taken to the prefecture for record and left at the office. The piece was lost subsequent to that time. He does not remember what the piece contained, as he could read very little of this ancient manuscript writing, but thinks it contained the signatures of the officers and the connection of the boundary lines, but does not remember whether it contained anything else. Knew Antonio Sandoval from 1854 to 1861. Knew Sandoval was an official from the records. Understood that governor Armijo issued an order to Sandoval to give the grantees the land, but knows this only from the older people. Understood this order from

Armijo to Sandoval must have been in writing, and that Gaspar Atencio and José Garcia carried the order to Sandoval.

On cross-examination, witness affirms the fact of taking Exhibit "A" to Albuquerque in 1857 to have it recorded. When getting ready to file the case in the Court of Private Land Claims, they got together and discussed the papers and sent for their lawyers. They found they did not have the original and they talked about the condition of the title papers, and told the lawyers that they had title from the governor, and they told them they had better search and account for it. They discussed among themselves that they must have a grant from the governor and they had looked for the same, although they understood from the grantees that it had been destroyed. He understood Exhibit "A" to be a copy of the original, and that it was a copy of the grant from the governor, and that it is a copy of the one which it was said they came to Santa Fé to get. They never claimed that they had any other paper except this original from which this copy was made. (R., 24–31.)

J. Francisco Chavez testified on behalf of the plaintiffs that he was fifty-nine years of age and a prominent man in the territory. Knew Antonio Sandoval, and remembers the destruction of his house; also the destruction of the archives of the prefecture, as well as the destruction of certain archives of the territory of New Mexico; also the loss and destruction of Book B. (*Note:* This Book B was a record of the government of the United States, and kept under an order made by

general Kearny when in charge as military governor of the territory, and was not a part of the Spanish or Mexican archives.) (R., 31–34.)

Ramón Zamora testified on behalf of the plaintiffs that he was seventy-nine years of age, lives at San Antonito, and was one of the original grantees; thinks official possession was given them of this grant by the government, because a man was sent to Santa Fé to ask for it, and following it partition was made. The first one measured out was Dionicano Atencio; measurements were made by José Trujillo, the judge, who resided at the *rancho* at Albuquerque. He says the judge in making the measurements and giving the possession did not define the boundaries. Common lands were given and designated and to these the boundaries were shown, which he states. When the judge gave possession of this land, he gave a title paper, from which a copy was taken to be kept by them, and the original remained in the power of Antonio Sandoval, who was a rich man living at Los Barelas, and was prefect. Does not know what became of the original. It remained with Sandoval, and that was the reason copy was given to them, which copy he states they now have. Subsequently they could not find the original on account of the burning of Sandoval's house. Witness states that Rumaldo Chavez was the son-in-law of the justice José Trujillo, and that Chavez was only the clerk of the justice; that he is now dead, and Trujillo is dead; that Vicente Samora, his brother, lived at San Antonito in 1840 and was one of the original grantees, and that he gave a certificate or *hijuela* to

Vicente Samora, and he gave each of them certificates that they might know their lands partitioned to them, and the town was called San Antonito. The tract was given in common. He does not believe that there are any persons living upon the grant who are not descendants of the original grantees with the exception of one woman.

On cross-examination the witness testifies with reference to the boundaries of the grant. On redirect examination he testified that Sandoval was prefect when he made the grant, and that the authority he had therefor was an order from Santa Fé. "Maybe he was ordered from Santa Fé to make the grant." Says he believes the order came from Santa Fé because some men went up there for it; after that the land was partitioned. The men who went to Santa Fé were Gaspar Atencio and Juan José Garcia, who were grantees and received land in partition. Some of their descendants are living, but none of them on the grant. On recross-examination he testified that he knew Sandoval personally; had had conversation with him with regard to making this grant, and that he told him he had authority as prefect to make it. This was at the time partition was made. This conversation occurred at the house of Sandoval at Barelas. He did not show him any written authority from the governor of New Mexico, but simply told him he had authority to make the grant. (R., 35–40.)

The grant in this case was rejected by the Court of Private Land Claims upon the ground that a prefect had no authority under the laws of Mexico, as they existed in 1840, to initiate a grant for any purpose of lands of the republic, whether that grant should be an individual one or intended for the establishment of a town or community. Nothing appears in the record to show that the alleged acts of the prefect, Sandoval, and the justice of the peace, Trujillo, ever received the approval or sanction of any superior authority of the republic of Mexico. It can hardly be contended that the grant in this case was other than what is commonly designated a town or community grant, and it falls clearly within the decisions of this court in the cases of *United States* v. *City of Santa Fé* (165 U. S., 675) and *United States* v. *Sandoval et al.* (167 U. S., 278), San Miguel del Bado grant, decided at the last term of this court. In order for the twenty-seven allotments at San Antonito to be valid there must have been some order from the superior authorities, setting apart the district of country for the establishment of a town or community, and authorizing some official or official body to place the parties in possession and make the allotments, as is clearly shown in the Sandoval case and in the Las Vegas grant, therein referred to, so that the allotments that were made at San Antonito, under the direction of prefect Sandoval were invalid as against the government unless authority was given therefor or these acts subsequently ratified by lawful authority, neither of which appears to have been the case.

An attempt is made by the testimony of interested parties to supply the original authority to prefect Sandoval by statements that men were sent to Santa Fé to obtain the land, and received instructions to Sandoval to grant and allot the same. This testimony is unreliable and unsupported by anything that occurred. Assuming, for the purposes of the case, that the title papers introduced in evidence were competent, they clearly indicate that the petitioners for the grant applied first to Sandoval, prefect, and that he acted upon his own motion and authority, if any he had. It is hardly probable that Sandoval would have taken the action alleged in this case without reciting or making some mention of his specific directions thereto, if, as a matter of fact, the same had been given him by governor Armijo.

I have no doubt that the allotments were made as claimed, and that some of the people and their descendants have been living at San Antonito ever since, but I do not think they are entitled to a confirmation for the reasons above stated; and further, for the reason that such a confirmation would in no wise conform to the first subdivision of section 13 of the act of March 3, 1891, which prohibits the Court of Private Land Claims from allowing any claim which does not appear to be upon title lawfully and regularly derived from the government of Spain or Mexico, or from any of the States of the republic of Mexico having lawful authority to make grants of land, and one which, if not complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to

make perfect, had the territory not been acquired by this government, etc.

It is contended on behalf of the claimants that because congress has seen proper in the exercise of its discretion to confirm certain grants made by prefects, it therefore amounts to a legislative ratification of all acts performed with respect to these matters without previous authority therefor, and that this subsequent ratification by the United States through congress is of the same force as if done by preexisting power and relates back to the act done, and the case of *United States* v. *Arondondo* (6 Peters, 691) is cited as sustaining such contention. An examination of the case, as well as the citation, shows an overapplication of the principle announced, which was that congress by confirming the reports of the commissioners and other tribunals authorized by law to pass upon land grants, sanctioned the rules and principles on which they were founded, and no more. Such an action by congress in confirming these reports did not thereby authorize other tribunals, acting under specific authority from it, defining the rules and principles upon which they should act, to depart therefrom by reason of its former action. In the case of *Rio Arriba, etc., Co.* v. *United States* (167 U. S., 298), Cañon de Chama grant, it is held that such acts by congress are matters of grace and not matters of right; and hence, under the provisions of the act of 1891, they have no application in this case.

Counsel also seeks to sustain the action of the prefect, based upon paragraph 27 of the law of March 13, 1837. (Reynolds, 221.) This section of the law presupposes an

existing grant to the town in the district presided over by the prefect, and authorizes him to make distribution of the common lands, subject to the control of the governor and the departmental council, but nowhere can a law be found, to my knowledge, authorizing a prefect to initiate and make a direct grant of any kind to any individual, association of individuals, or corporation, for any purpose whatever.

It will be noticed by the petition for this grant that the land had been originally granted to one Cristobal Jaramillo, and that the same had been abandoned. I may state, when it appeared the land had been abandoned by Jaramillo, it was subject to regrant under the laws of the republic in relation to the disposition of the public lands, and that such regrant was a sufficient entry.

It is contended that this prefect, Antonio Sandoval, had acted as governor of the territory during the absence of governor Armijo, repelling the Texans in 1841. Without entering into this question, nothing appears in the record to show that Armijo was absent from the territory, nor does anything appear to show that Antonio Sandoval was attempting to act as governor, and I am satisfied that had he been assuming to act as such during the absence of Armijo such fact would have appeared affirmatively somewhere in the papers.

The grant is also sought to be sustained under the doctrine of prescription, and it is stated that the grantees and their legal representatives have been in possession of the tract for more than fifty-six years. During fifty of these years, however, whatever possession may have been held

was under the government of the United States, and forty-eight of these years have been since the treaty of Guadalupe Hidalgo. In this litigation we are called upon to adjudicate Spanish and Mexican land grants as they existed at the date of the treaty, and any rights which may have been acquired since that time were not acquired from Spain or Mexico, but from the United States, and are not subject to the jurisdiction of the Court of Private Land Claims, so that eight years' possession is the longest period we are authorized to consider in determining the validity of this grant. I do not understand that prescription or limitation can be invoked against the King or the government without some specific provision permitting the same, and I know of no law which permits the plea of prescription to be interposed upon the proof of possession for eight years only. The question might be asked whether or not in 1848, had the Mexican government sought to eject the settlers upon the San Antonito grant, these residents could have interposed their possession of these two thousand eight hundred varas for eight years as a plea of defense. If they could not have done so, it can not be successfully interposed here. Mr. Orosco, in his work on Legislation and Jurisprudence of the Public Lands of Mexico, edition of 1895, holds that the public lands form part of the public revenues, and therefore are imprescriptable.

It appears that under the decree of Sandoval, dated March 24, 1840 (R. 7), all that portion of said land which was unallotted should remain free for pastures and watering places to the public generally. Objection was

made to the introduction of the copy of the grant which had been transferred by Rumaldo Chavez to Gaspar Atencio, and it will be noted that this copy was not certified by the prefect or his secretary, nor by the justice. Rumaldo Chavez, who the evidence shows to have been the clerk of the justice, in making the copy, if he did, failed to copy the signatures of José Trujillo and his attending witnesses, if any he had, so that if the possession was formally executed and the *expediente* remained in the archives of the prefecture, it surely would have contained the signature of the officer executing the same, together with the attending witnesses. By reason of the peculiar endorsement of transfer of this instrument to Gaspar Atencio by Chavez, I am led to seriously doubt its *bona fides*, and especially as we are unable by any other archive evidence to verify any portion of the same. It would be a dangerous precedent in this litigation to hold that this document is competent evidence to prove a grant, when it can not in any way be verified. I can not conceive why the original grantees, particularly Gaspar Atencio and Juan José Garcia, should have been compelled to resort to an assignment of such an instrument to themselves as evidence of title when it is clear that if Sandoval made the grant, as alleged, and this instrument was transferred to Atencio prior to 1846, it might still have been verified by some signature of Sandoval, who, it was shown by the evidence, did not die until 1860 or 1861. The proper officials to execute the *testimonio* and deliver the same to the grantees as evidence of title were the officers of the prefecture; or

the justice of peace who delivered the possession might have done so, being thereunto duly authorized by an order of the granting officer. I have never seen an instrument authenticated by a clerk of a justice of the peace, a position unknown to the law.

I respectfully submit that the judgment of the Court of Private Land Claims is correct.

Respectfully submitted.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

JOHN K. RICHARDS,
Solicitor-General.

CRESPIN *v.* UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 6. Argued October 12, 1897. — Decided November 15, 1897.

The plaintiffs claimed as heirs and legal representatives of the original grantees under a grant alleged to have been made March 24, 1840, by "the prefect or superior political chief of the district of Bernalillo," in the Republic of Mexico. There was no evidence that the grant of the prefect ever received the sanction or approval of the governor, the ayuntamiento, or other superior authority of the Mexican Republic. *Held*, that it was beyond the power of the prefect alone to make the grant in question.

Possession of land so granted after the date of the treaty of Guadalupe Hidalgo, however exclusive and notorious, cannot be regarded as an element going to make up a perfect title.

This was a petition by Crespin and about forty others for the confirmation of what is commonly known as the San Antonito grant, situated in Bernalillo County, New Mexico, and alleged to contain 32,000 acres.

Plaintiffs claimed as the heirs and legal representatives of the original grantees, and set forth in their petition that, on March 24, 1840, the Republic of Mexico, through Antonio Sandoval, "the prefect or superior political chief of the district of Bernalillo, thereunto duly authorized by the laws, usages, customs, superior orders and decrees of the said Republic, or of its duly constituted and competent authorities," granted and delivered possession of this tract of land unto the grantees therein named; that the original grant or *expediente* of title remained in the office and formed a part of the archives of the said prefect, and that an official copy or *testimonio* was at the time delivered to the grantees as a complete and final title in fee.

That the petitioners were unable to find the original *expediente*, which, with a large part of the other public archives, was lost, destroyed or stolen, and that the official copy, or *testimonio*, had also been stolen; but that, while the *expediente* was in the archives of the prefecture, a *testimonio*, or

true copy, thereof was made by one Rumaldo Chaves for his own use, and that such copy was, prior to 1846, transferred and delivered by said Chaves, by indorsement thereon, unto Gaspar Atencio, one of the grantees of the original grant, for his uses and purposes, and has ever since remained in his possession.

The petitioners further alleged, upon information and belief, that the grant was finally confirmed and approved by Governor Manuel Armijo and the departmental assembly, and that by virtue thereof an allotment was made in severalty to each of the grantees, and juridical possession given to such grantees by José Trujillo, in accordance with the decree of the prefect and the laws then competent and in force in said territory, and that the grantees since then have been in open and notorious possession of the tract. The remaining allegations of the petition are immaterial.

Upon the trial of the case, plaintiffs offered in evidence a petition addressed to "Señor Prefect Don Antonio Sandoval" by "Juan José Garcia and Gaspar Atencio, residents of the demarkation of Albuquerque," stating that they and their constituents, finding themselves without tillable land by which to subsist, "and there being back of the Sandia Mountain a tract of land called San Antonito, the fertility of which and the increase of whose waters all invite its cultivation, by this means the commendable promotion of agriculture and the progressive benefit of the petitioners will be accomplished," they inform the prefect "that it is fifteen years, a little more or less, since this tract was donated to Cristobal Jaramillo, deceased; yet, moreover, in all this space of time, said land has not been cultivated at all, and if this has been forfeited in accordance with our laws, we humbly beg your honor to be pleased to grant us what we ask, as it is without prejudice to a third party."

In compliance with this petition, the prefect, signing himself simply "Sandoval," made an order, under date of March 21, 1840, that the petition be transmitted to the justice of the peace of Los Ranchos to report in detail the nature of the land and the need of the petitioners.

On the following day, José Trujillo, the justice, filed his report, stating that, after having fully informed himself as to the nature of the lands, "it is fitted for agriculture, very pleasing and very delightful for a life of tranquillity, very favorable to everything for a most comfortable living," and that the petitioners are in need of landed property, with the exception of three persons named, who are known to have land, but do not count upon it, because they are in debt and have it secured by said lands, and that all the others have not such property.

Upon this report Sandoval made the following decree:

"Barelas, *Mar.* 24, 1840.

"One of the most commendable and beneficial things to a people being the promotion of agriculture, let this petition be transmitted to the justice of the peace of Los Ranchos, in order that with all the customary formalities he give the possession solicited by the parties in interest, without prejudice to a third party, and only for cultivation the lands necessary, leaving free the pastures and watering places, which under no circumstances ought to be interfered with; and after this is done he shall make a full report to this prefecture.

"Francisco Sarracino, *Secretary.* Sandoval."

In compliance with this decree, Trujillo, justice of the peace, reported that he had given juridical possession of the lands to the petitioners and their associates to the number of twenty-seven, who were each given one hundred *varas*, except two of the petitioners, who were given one hundred and fifty, in the usual form of livery of seizin under Spanish grants.

The *testimonio*, or official copy of these papers, was not made by the secretary of the Prefect Sandoval, but by Rumaldo Chaves, the clerk of the justice of the peace Trujillo, and seems to have been made for the personal use of Chaves, and afterwards transferred by indorsement to Gaspar Atencio, who appears, from the document, to have been one of the leading petitioners, and received, according to the allotment, one hundred and fifty *varas*.

Counsel for Appellants.

Plaintiffs next offered in evidence the following *hijuela*, or certificate of allotment, executed April 11, 1840, by José Trujillo, purporting to show an allotment of one hundred *varas* of land at San Antonito to Vicente Samora under the decree of the prefect Sandoval:

"The citizen José Trujillo, justice of the peace of the jurisdiction of los ranchos de Albuquerque, does hereby certify in form of law that one hundred varas of land at San Antonito were donated to Vicente Samora in accordance with and as stated in the general grant made by me, the said justice of the peace, by virtue of the decree of March 24th made by the prefect Don Antonio Sandoval. The foregoing certificate is given at the ranchos this 11th day of April, 1840, I signing it with my two attending witnesses, to which I certify.

"JOSÉ TRUJILLO. [RUBRIC.]

"Attending witness:

"RUMALDO CHAVEZ. [RUBRIC.]

"Attending witness:

"PABLO ROMAN SISNEROS. [RUBRIC.]"

Plaintiffs further offered to refer to other cases and documents for the purpose of showing that other grants had been made by prefects, which were recognized and confirmed by the proper Mexican authorities, and, also, that several of such grants had been confirmed by the Congress of the United States.

These documents were all objected to by the Government, and were admitted subject to these objections. Some further explanatory oral testimony was introduced in support of petitioners' claim, but no evidence was offered on behalf of the Government.

Upon this state of facts, the court delivered judgment, dismissing the petition and rejecting the grant, whereupon the plaintiffs appealed to this court.

Mr. Henry M. Earle for appellants.

Mr. Matthew G. Reynolds for appellees. *Mr. Solicitor General* was on his brief.

Mr. Justice Brown, after stating the case, delivered the opinion of the court.

The principal question urged upon the attention of the court in this case is whether, under the laws of Mexico, as they existed in 1840, it was within the power of a prefect to make a grant of public lands.

In endeavoring to ascertain what were the laws of Mexico at any particular time, of which we are bound to take judicial notice, *Fremont* v. *United States*, 17 How. 542, 557; *Romero* v. *United States*, 1 Wall. 721, we are somewhat embarrassed by the frequency with which the government was changed — usually by revolutionary violence — between the time the Republic gained its independence in 1821 and the treaty of Guadalupe Hidalgo in 1848, under which the northern provinces of Mexico were ceded to the United States. These changes were sometimes accompanied by decrees annulling the acts of previous governments, cancelling grants, and putting new regulations in force with respect to the disposition of public lands. That these difficulties are of long standing is evident from the comments of Chief Justice Marshall in the case of *Soulard* v. *United States*, 4 Pet. 511, in which the court announced itself as unable to form a satisfactory judgment by reason of its inability to obtain proper information with regard to the laws and principles upon which the transfer of Spanish titles depended, and therefore postponed the final disposition of the case until such information could be obtained.

In view of this and similar difficulties, this court, as early as 1832, in *United States* v. *Arredondo*, 6 Pet. 691, laid down as a general proposition that the grant itself was *prima facie* evidence of its own validity, and that it would be presumed to have been regularly issued until the contrary appeared, or such reasons were offered for doubting its authenticity as were sufficient in law to rebut the legal presumption. To

the same effect are *United States* v. *Clarke*, 8 Pet. 436; and *United States* v. *Percheman*, 7 Pet. 51; *Strother* v. *Lucas*, 12 Pet. 410, 437; *Reynolds* v. *West*, 1 California, 322, 326; *Jones* v. *Garza*, 11 Texas, 186, 207.

The courts of California have carried this principle so far as to hold, though apparently with some fluctuation of opinion, that a grant of a pueblo lot made by an alcalde raises a presumption that the alcalde was a proper qualified officer; that he had authority to make the grant, and that the land was within the boundaries of the pueblo. *Reynolds* v. *West*, 1 California, 322; *Cohas* v. *Raisin*, 3 California, 443; *Hart* v. *Burnett*, 15 California, 530; *Payne* v. *Treadwell*, 16 California, 220; *Leese* v. *Clarke*, 18 California, 535; *Donner* v. *Palmer*, 31 California, 500.

In considering their methods of disposing of public lands, this court has had frequent occasion to uphold the validity of grants made by the Governors of the Spanish and Mexican provinces, who appear to have been sometimes also called "Political Chiefs." Indeed under the regulations for the colonization of the Mexican territories of November 21, 1828, the political chiefs were expressly authorized to grant the public lands of their respective territories. Reynolds' Land Laws, 141; *United States* v. *Workman*, 1 Wall. 745, 761; *Hornsby* v. *United States*, 10 Wall. 224, 231; *Vanderslice* v. *Hanks*, 3 California, 27; *Leese* v. *Clarke*, 3 California, 17; *Leese* v. *Clarke*, 18 California, 535, 546; but see *Jones* v. *Garza*, 11 Texas, 186. A similar power seems also to have been vested in the Spanish intendants. Reynolds' Land Laws, 59, 60; *United States* v. *Clarke*, 8 Pet. 436, 452.

Prefects were functionaries well known in the Roman law, and under the empire were clothed with extensive powers, both judicial and administrative. With the decline of the empire they seem to have lost their importance and to have finally disappeared; but, after remaining in abeyance for some hundreds of years after its fall, the office was revived in the eighth year of the French Republic, (1800,) and bestowed upon the heads of the departments into which the country had been divided by the National Assembly in 1790. In the perform-

ance of their duties they were aided by a council of prefecture. The prefect was charged with the administration of local affairs, and was practically the representative of the central government in public matters. The title was carried into several States, whose legislation was framed upon the model of the Code Napoleon, but, until the establishment of the Republic, was apparently unknown in Mexico. It seems to have been recognized, however, prior to 1836, since by the constitutional law or decree of December 29 of that year, defining the powers of the president and governors, there was given to the latter the authority "to appoint the prefects, to approve the appointment of the sub-prefects of the department, to confirm that of the justices of the peace, and to remove any of these officials." Reynolds, 205.

By the law of March 20, 1837, for regulating provisionally the interior governments of the departments, it is provided, by article one, that "the interior government of the departments shall be in charge of the governors, departmental councils, (juntas,) prefects, sub-prefects, common councils, alcaldes and justices of the peace"; that it shall be the duty of the governors to appoint the prefects, etc. The power of the prefects is thus defined: Article 77: "They shall regulate administratively and in conformity with the laws, the distribution of the common lands (tierras comunes), in the towns of the district, provided there is no litigation pending with regard to them, the right being reserved to the parties in interest to apply to the governor, who, without further appeal, shall decide what is most proper, with the concurrence of the departmental council (junta)." Reynolds, 221. This is the only act to which our attention is called which defines their functions.

It is difficult to say exactly what is meant by the power "to regu.. 'e administratively" the distribution of the common lands in the towns of the district. But it would not seem to include the power to make grants of public lands generally, though it might have justified in this case the special allotment (*hijuela*) to Vicente Samora, had it been made by the prefect. The power given to the governor to

make grants of public lands, which was expressly given by the regulations of November 21, 1828, (though the constitutional decrees of 1836 and 1837 were silent upon the subject,) taken in connection with the limited powers conferred upon the prefects by the law of March 20, 1837, apparently preclude the idea that the more general power of granting public lands was intended to be conferred upon the latter — in other words, the limited authority conferred upon them by Article 77 repels the inference of more extensive powers which had theretofore been vested in the governors, and in the governors alone.

Plaintiffs' counsel offered to show in this connection that other grants had been made by prefects, which had been recognized and confirmed by the proper Mexican authorities, and that several such grants had been confirmed by the Congress of the United States; but they were not regarded by the court below as sufficient to establish a general custom to recognize grants made by prefects as valid and legal. Indeed, the power given to prefects to regulate administratively the distribution of the common lands would seem to presuppose a prior grant to the pueblo, made by a higher authority, and to have been intended merely to authorize the prefect to make distribution of such common lands among the inhabitants of the pueblo.

The only case we have been able to find in which the power of prefects to make grants of public lands is discussed is that of *Ohm* v. *San Francisco*, 92 California, 437. In that case the complaint alleged that the State of California was, prior to July 13, 1848, a political department of the Republic of Mexico, and was subdivided into pueblos, constituting political municipalities, supplied with such officials as the republic or governor chose to appoint; that such officers could grant and distribute lands of the municipalities; that the pueblo of Yerba Buena, or San Francisco, was one of such municipalities, and was provided with a prefect appointed by the Republic and the governor of California, who was empowered, among other things, to make a grant and distribution of lands to private persons in fee within his district and said municipality. It seems that the grant in this case had been

approved by the governor of the department by virtue of his superior power to grant vacant lots within the boundaries of the Republic, and had been subsequently confirmed by the District Court.

The rarity of the question involved, and the special familiarity of the Supreme Court of California with Spanish and Mexican land grants, will justify a somewhat lengthy transcription from its opinion concerning the power of prefects: "We cannot find," said the court on page 451, "in any of the laws or ordinances of Spain and Mexico to which we have been referred any authority conferred upon prefects to make grants in fee of the pueblo lands. It is not contained in the decree of the Spanish Cortes of January 4, 1813, nor in the plan of Pitic, nor in the Mexican law of colonization of 1824, nor in the regulations of 1828, nor, we think, in the law of March 20, 1837, to which the prefect himself refers as the source of his authority. The clause of this act, cited and relied on by the appellant, is given in the original Spanish and in translation, at page 314, addenda, Dwinelle's Colonial History of San Francisco. In terms, it merely authorizes the prefects in their respective districts to 'regulate executively' the distribution of the *common* lands of the pueblos, provided there are no law suits pending in the courts concerning them, saving a right of appeal to the governor. The law writers do not agree in their construction of this article. Dwinelle thinks it conferred authority to make grants of the pueblo lands for the pueblo. Halleck thinks that it merely conferred a power to regulate the temporary use of the common lands. This court has decided that it did not expressly confer power to grant lands in private ownership. *Hart* v. *Burnett*, 15 Cal. 572. As a matter of history it is known that the prefects very rarely attempted to exercise such power, not more than two or three instances, including this grant to Scherrebeck, appearing in the records of San Francisco, and one of those subsequent to the conquest, by Horace Hawes. It is also well known as a fact and as matter of law that the claim of such power by the prefects has been repudiated by the city from the beginning. The complaint here shows that the validity

of this Scherrebeck grant was denied by the city as early as 1853, and ever since. The Van Ness ordinance passed in 1855, and ratified by the legislature in 1858, practically confirmed all previous grants of pueblo lands made by any ayuntamiento, town council, alcalde or justice of the peace of the former pueblo, or of the city, but was entirely silent as to grants by prefects. Even the allegations of the complaint do not show that the prefect had power as agent and acting in behalf of the pueblo to alienate its lands in fee. He is said to have authority to make grants and distribution of lands within the pueblo limits, but this power may have been derived from the departmental authorities and exercised independently and against the will of the municipal authorities. And this appears to have been the case with the Scherrebeck claim; the making of the grant was opposed by the alcalde, the only municipal officer who appears to have had anything to do with it, but it was approved by the governor and the superior authorities."

In the case under consideration there was no evidence that the grant of the prefect ever received the sanction or approval of the governor, the *ayuntamiento*, (town council,) or other superior authority of the Mexican Republic; and we do not think the fact that similar grants may have been confirmed by Congress, or received the approval of the Mexican authorities, is decisive in favor of recognizing its validity. In its adjudication of these cases, the Court of Private Land Claims is subject to certain statutory restrictions upon which previous confirmations by Congress of imperfect grants have no proper bearing. *Rio Arriba Co.* v. *United States*, 167 U. S. 298, 308. We are of opinion that it was beyond the power of the prefect to make the grant in question.

Nor do we think that petitioners are entitled to this grant by prescription or adverse possession, since under section thirteen of the act creating the Court of Private Land Claims, the title to the land must have been "lawfully and regularly derived from the government of Spain or Mexico," and one which, if not complete and perfect at the date of the acquisition of the property by the United States, "the claimant

would have had a lawful right to make perfect had the territory not been acquired by the United States." This would preclude the idea that possession since the date of the treaty, however exclusive and notorious, could be regarded as an element going to make up a perfect title. There was no evidence of more than six or eight years' possession prior to the date of the treaty, and this, under any construction of the Spanish or Mexican laws, would be insufficient to constitute a title as against the sovereign. Indeed, it may be open to doubt whether under the legislation of Mexico public lands are not imprescriptible; but if it be otherwise, it would seem that under the decree of the King of Spain of July 16, 1819, nothing less than a possession of forty years could be deemed or respected as creating title by adverse possession. 2 White's New Recopilacion, 562.

The disposition we have made of this case renders it unnecessary to consider whether the document offered in evidence to establish the plaintiffs' title, which was neither the *expediente*, nor the *testimonio*, or official copy thereof — and was merely an unsworn and unverified copy of the *testimonio* — was admissible at all.

If there be any hardship to the petitioners in the rejection of this grant, they must apply for relief to another department of the Government. We are bound by the language of the act creating the Court of Private Land Claims. Its decree in this case was correct, and it is therefore

Affirmed.